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LETTER DATED 7 OCTOBER 1998 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

The Governing Council of the United Nations Compensation Commission has concluded its twenty-ninth session, held at Geneva from 28 to 30 September 1998. The delegations of Kuwait, Iraq, India and the Sudan addressed the Council during its opening plenary meeting.

The representative of Kuwait welcomed the commencement of the work of the F3 Panel of Commissioners, responsible for addressing claims filed by the Government of Kuwait, and expressed the view that additional resources needed to be allocated urgently to the category D claims section (responsible for processing the larger individual claims). In this regard, the representative of Kuwait suggested that it might be necessary to appoint a second category D Panel of Commissioners to accelerate the review of the claims. The representative of Kuwait also stressed that priority should now be given to the processing of claims for environmental damage arising from Iraq's invasion and occupation.

In their interventions, the representatives of Kuwait, India and the Sudan focused on the issue of priority of payment to successful claimants. At present, pursuant to decision 17 of the Governing Council, successful claimants in categories A, B and C (the smaller individual claims) are accorded priority at both the processing and payment stages. In the first phase of payment set out in decision 17, successful claimants in these categories are paid an initial amount of the lesser of $2,500 or the principal award. The second phase of payment will commence once the payment of these initial amounts has been completed. The Governing Council is yet to determine whether the priority established in decision 17 will continue with respect to the second phase of payment, or whether the payment system will be revised. A secretariat paper on this issue will form the basis of discussions by the Governing Council at forthcoming sessions.

The representative of Kuwait expressed the view that successful claimants in categories D, E and F (concerning the larger individual, corporate and government claims and claims of international organizations), should receive compensation as soon as the first phase of payment had been completed.

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The representatives of India and the Sudan, speaking on behalf of a number of Governments, stated that priority should continue to be accorded to successful category A and C claimants in the second phase of payment. At the same time, the representatives of India and the Sudan acknowledged the need to devise a mechanism whereby the payment of awards made in categories D, E and F could also commence, with priority being given to category D claimants. A paper setting out the proposal of the Sudan with respect to the second phase of payment was circulated to Governing Council members in advance of the session.

The representative of Iraq repeated his Government's concerns about Iraq's opportunity for participation in the Commission's work at all levels, in particular in relation to the examination and verification of claims, and reiterated Iraq's position taken in relation to the work programme of the Commission for 1997-2003, stating that the programme gave the secretariat a role and authority that it did not enjoy under the Commission's Provisional Rules for Claims Procedure.

The Governing Council considered the following reports during the course of the session:

- Report of the Executive Secretary - summary of activities;

- Report and recommendations of the Panel of Commissioners concerning part one of the second instalment of category D claims (see annex I);

- Report and recommendations of the Panel of Commissioners concerning the second instalment of F1 claims (see annex III);

- Fifth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (requested corrections to category A claim awards) (see annex V);

- Report on the distribution of payments and transparency and on the return of undistributed funds.

The Governing Council considered and took note of a report prepared by the Executive Secretary on the activities of the Commission during the period from June to August 1998. The report addresses the selection of Commissioners; the processing of claims; and the payment of approved awards.

The Governing Council considered the report and recommendations of the Panel of Commissioners concerning part one of the second instalment of category D claims (individual claims for damages above $100,000). This instalment concerned 250 claims filed by 18 Governments and 1 international organization on behalf of individuals. The Governing Council approved the award recommended by the Panel of $11,182,109 compensation in respect of 219 claims.

In the light of the information provided in the report of the Executive Secretary about the reduction in the number of category D claims to be reviewed in the third instalment, and so as to ensure that the work programme for the processing of category D claims remains unaffected, the Council requested the

secretariat to prepare a paper discussing whether a second category D Panel should be appointed.

The Council also considered the report and recommendations of the Panel of Commissioners concerning the second instalment of F1 claims (claims of Governments and international organizations). The report covered 17 claims filed by 15 Governments for evacuation costs, damage to embassy property and other related losses. After an extensive discussion of the determinations made by the Panel of Commissioners in the report, the Governing Council finally achieved a consensus to approve the award recommended by the Panel of $97,665,367 compensation in respect of the claims. A statement made by the President of the Governing Council in conjunction with the Council's decision drew the attention of the panels of Commissioners to the need to provide full and clear explanations of the reasons for their determinations. During the course of adopting the decision, the representative of the Russian Federation made a statement, to be issued as a separate document, in relation to the report and its recommendations.

A number of representatives made suggestions during the course of the session as to the content and structure of future reports of panels of Commissioners. The Council requested the secretariat to prepare a paper addressing the suggestions, to be discussed at an informal meeting of the Working Group to be held at the end of October 1998.

The Governing Council continued its discussion of the selection of Commissioners for two panels of Commissioners, the E2A Panel, responsible for addressing non-Kuwaiti corporate claims, and the E4A Panel, responsible for addressing Kuwaiti private sector corporate claims. The Governing Council requested the secretariat to inform Council members of the identity of the candidates as soon as possible after the session. In doing so, the Council emphasized that regard should be had to the principle of geographical distribution. The Governing Council decided that upon receipt of the formal communication of the Secretary-General's nomination of the six candidates, the Commissioners could be appointed by means of a written procedure.

The Council discussed several issues relating to the processing and payment of claims. These issues included verification and valuation procedures for category E (corporate) claims; the methodology used in determining claims for C4 personal property loss; the proposal of the Governments of the Islamic Republic of Iran, Jordan, Kuwait, Saudi Arabia and the Syrian Arab Republic regarding priority for processing and payment of environmental monitoring and assessment claims; requested corrections to a small number of awards made in respect of category A claims; and distribution of payments and return of undistributed funds.

On the basis of a request made by the members of the Governing Council, the secretariat prepared a paper and made a presentation during the session on verification and valuation procedures for category E (corporate) claims. Council members took note of the paper and presentation.

The methodology employed by the category C Panel of Commissioners in determining claims for C4 personal property loss had been discussed by the

Governing Council at its twenty-seventh and twenty-eighth sessions. A preliminary report prepared by the secretariat was discussed by the members of the Working Group at an informal meeting held on 15 September 1998. The Council decided that those personal property loss claims in respect of which there existed a difference of 50 per cent or more between the amount of compensation claimed and the amount of compensation awarded should be subject to review. In the course of approving that figure, the representative of China emphasized the right of any Council member to ask questions and raise issues prior to the Governing Council reaching a final conclusion on any matter. Furthermore, the representative stressed the role of the Governing Council in providing guidance to the secretariat and the panels.

The Governing Council discussed the proposal of the Governments of the Islamic Republic of Iran, Jordan, Kuwait, Saudi Arabia and the Syrian Arab Republic concerning the processing of claims relating to the monitoring and assessment of the environmental damage caused by the invasion and occupation of Kuwait. The Governing Council agreed that, where appropriate, priority should be given by the F4 Panel of Commissioners responsible for resolving environmental claims to the processing of such monitoring and assessment claims. The issue of priority of payment of awards made in respect of such claims will be considered by the Governing Council at a later date in the context of an overall discussion of the issue of the second phase of payment.

The Governing Council approved requested corrections to a small number of awards made in category A and considered various reports by Governments on the distribution of payments received from the Commission to successful claimants and on the return of undistributed funds to the Commission.

The issue of claims for military costs by States that were not members of the Allied Coalition Forces was also discussed by the Governing Council. The Council confirmed that, as with claims for military costs by members of the Allied Coalition Forces, such claims were not eligible for compensation by the Commission. Claims by members of State forces that were not members of the Allied Coalition Forces were similarly not eligible for compensation for loss or injury arising as a consequence of their involvement in military operations against Iraq, except if the three conditions set out in paragraphs (a), (b) and (c) of Governing Council decision 11 were met. Those conditions provided that any compensation must be awarded in accordance with the general criteria already adopted by the Governing Council, that the claimant must have been a prisoner of war, and that the loss or injury must have resulted from mistreatment in violation of international humanitarian law.

Finally, the Governing Council decided to hold its thirtieth session from 14 to 16 December 1998.

(Signed) Gonçalo DE SANTA CLARA GOMES
President of the Governing Council

Annex I

Report and recommendations of the Panel of Commissioners concerning part one of the second instalment of individual claims for damages above $100,000 (category "D" claims)*

* Previously issued as document S/AC.26/1998/11.

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Introduction

1. This is the third report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages above US$100,000 (category "D" claims), pursuant to article 38(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). This report contains the determinations and recommendations of the Panel in respect of part one of the second instalment, comprising 250 category "D" claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.

2. Part one of the second instalment comprises:

(a) claims for loss types for which the Panel developed methodologies in the first instalment: D1(money); D1(MPA); D3(death); D4(MV); D6(loss of income); D10(payment or relief to others); and D(other) losses (hereinafter referred to as the "application claims"); 2/ and

(b) claims for new loss types in respect of which the Panel has developed processing methodologies in this report. The new loss types are D2(personal injury) and D5(loss of bank accounts, stocks and other securities).

3. The Panel's report in respect of part two of the second instalment will comprise 150 claims relating to personal property ["D4(personal property)"] losses. In view of the diverse nature of the claims for personal property losses, the complexity of legal and valuation issues raised in deliberations with the Panel's consultant, as well as the need to obtain additional information, 3/ pursuant to article 38(d) of the Rules, the Panel has designated these claims as "unusually large or complex" and their review will require a maximum of twelve months. In dealing with the diversity and complexity of the 150 D4(personal property) claims, the Panel expects to be able to establish the processing methodology for the resolution of most of the remaining D4(personal property) claims.

4. In chapters I to VIII of its "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)", 4/ approved by the Governing Council on 2 February 1998, the Panel established the general framework and criteria that it will apply in its consideration of all category "D" claims. The Panel will also take into account the factual background already fully set out in the First Report.

5. This report reflects the claims reviewed and work performed by the Panel since it issued its recommendations concerning Claim 3000001 in February 1998. 5/ In addition to regular communications with the secretariat, the Panel met with the secretariat at the Commission's

headquarters in Geneva to consider claims in part one of the second instalment on the following dates: 3-5 February, 20-22 April, 26-27 May, 11-16 June, and 27-29 July 1998, respectively.

6. The Panel issued two procedural orders in respect of the claims in the second instalment. 6/ The Panel agreed to defer one claim in this instalment as it contains loss types that the Panel does not resolve in the second instalment. 7/

7. In its review of the claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of international law. The Panel, as in the case of the First Report, has taken into account the level and type of evidence that should reasonably be required of a claimant given the overall circumstances at the time of the loss, particularly in Iraq and Kuwait.

8. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of part one of the second instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports, which the Panel identified in the First Report as the "Background Reports". 8/ The Panel has been particularly careful to ensure that there was adequate evidence that the losses claimed were directly attributable to the invasion and occupation of Kuwait by Iraq and that the amounts awarded were duly established.

I. JURISDICTIONAL ISSUES

9. Some of the claims in part one of the second instalment raise jurisdictional issues which were not addressed by the Panel in the First Report. These issues and the Panel's decisions relating to them are set out hereafter.

A. Bona fide dual nationality

10. According to paragraph 11 of decision 7, 9/ "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". However, neither the Rules nor any other decision of the Governing Council provide a definition of the term "bona fide dual nationality". In view of the need to resolve the issue of dual nationality raised by two of the claims in the second instalment, the Panel decided that where the claimant had applied for or received the second (non-Iraqi) nationality prior to 2 August 1991 ("the relevant date"), the claimant should be considered as having acquired the second nationality

bona fide. The Panel further decided that, where an Iraqi dual national had acquired the second nationality after the relevant date, the Panel would not be precluded from holding that the second nationality was nevertheless acquired bona fide, if the particular circumstances of the case justified such a conclusion. This view is consistent with that of the category "A" Panel 10/ and has been adopted by the category "C" Panel. 11/

11. Applying the above reasoning, the Panel has found the two claimants in part one of the second instalment to be both bona fide holders of a second nationality and therefore eligible to receive compensation.

B. Claims by third parties

12. The Panel noted that a number of claims have been filed by family members on behalf of individuals who allegedly suffered the loss for which compensation is being sought. The Panel took the view that while as a general rule only claimants who suffered losses and claimed compensation should have filed the claims, there could be instances where a claim could properly be filed on behalf of the individual who suffered the loss. For example, where a claim has been inherited or assigned, or relates to property owned jointly by more than one person, or where the individual concerned is a minor, or where an individual has died or cannot himself or herself file the claim for medical or other reasons, the Panel concluded that for such claims to be eligible for compensation, the claimant must provide proof that he or she is legally authorized or entitled to file the claim on behalf of the individual who suffered the loss. The Panel found that such claims under review in the present instalment satisfied the jurisdictional criteria and therefore considered them compensable.

II. APPLICATION CLAIMS

13. In the First Report, the Panel established the methodologies for loss types of which subsequent claims are treated as application claims. However, some of the application claims in this instalment have raised issues not dealt with in the first instalment. These new issues and the Panel's determinations on them are set out in this section.

A. D1(money) issues

1. Claims for the "forced sale" of items of personal property

14. The Panel considered claims submitted by claimants who, in order to survive during the period of the occupation of Kuwait, were forced to sell items of personal property such as motor vehicles, both in Kuwait and in neighbouring countries, at prices below their market value. The Panel determined that such "forced sales" are a direct result of the invasion and occupation of Kuwait and are therefore compensable. The Panel further held that to be entitled to compensation the claimant must provide the following evidence: proof of presence in Iraq or Kuwait at the appropriate time;

ownership of the property items that were the subject of the sale; an explanation of the circumstances giving rise to the sale; evidence that the sale took place; and evidence of the original value and amount received for the items sold.

2. Claims for payment of customs duties

15. A number of claimants have claimed compensation for customs duties that they were obliged to pay on returning to their home countries following the invasion and occupation of Kuwait. The Panel took cognisance of the fact that many of the claimants concerned had lived in Kuwait for most of their lives and had a reasonable expectation of remaining there had Iraq's invasion and occupation not occurred. In such circumstances where the claimants show that they would not have otherwise left Kuwait or entered another country for residential purposes and that they paid customs duties upon entering a country for the first time, the Panel held that such payments are compensable.

B. D4(MV) issues

1. Vehicles not listed on the (MVV) Table

16. In reviewing the D4(MV) first instalment claims for the total loss of motor vehicles, the methodology applied by the Panel was to compare the original value of the vehicle, the amount claimed and the value indicated in the Motor Vehicle Valuation Table (the "MVV value") 12/ and to award the lowest of the three amounts. One of the claims in the second instalment is for the loss of a vehicle described as a "1981 D-Mach-45 ton Jack Hammer Crane". The MVV table does not have a matching value for such a vehicle. The Panel determined that in such instances, the replacement cost of the vehicle depreciated to reflect the life expectancy of the item should be applied. The Panel applied this principle and was able to determine the value of the vehicle by reference to the evidence provided by the claimant.

C. D6(loss of income) issues

1. Claims for employment that had not commenced as of 2 August 1990

17. A number of D6(loss of income) claims were filed by individuals who assert that, prior to the invasion, they had signed employment contracts with new employers in Kuwait or Iraq for work due to start between 2 August 1990 and 2 March 1991. Others assert that they were in the process of negotiating new employment contracts that were to commence during the period of the occupation but that they had not yet signed such contracts.

18. The Panel determined that where the claimant had signed such a contract prior to the invasion, losses arising from the contract are compensable. However, where the contract had not been signed, the claim

would only be compensable where the claimant has produced a firm letter of intent written by the new employer expressly stating the intention to employ the claimant. The Panel further determined that such contract or letter of intent must contain all the requisite information (i.e., term of employment, salary, etc.) 13/ to allow the calculation of the recommended compensation. In addition, such claimants must provide proof that they had given up their former employment in order to take up the new employment.

2. Claims with country of origin outside Iraq or Kuwait

19. In the First Report, the Panel considered the compensability of a D6(loss of income) claim filed by an employee of the London branch of an Iraqi State-owned bank which closed down soon after the invasion, and concluded that such claim would be compensable regardless of the location of the loss if the loss is shown to be direct. Since the claimant in the first instalment satisfied this and other established criteria, the Panel recommended payment of compensation to him.

20. Part one of the second instalment includes three other claims by employees of the same bank. In reviewing these claims and recommending payment of compensation, the Panel also noted the instructions to claimants in paragraph 4 on the first page of the Claim Form (based on Governing Council decisions 7, 9 and 15) 14/ that as long as the loss was "direct" it was immaterial that it could also be attributed to the trade embargo. 15/

3. Claims for more than one employment running concurrently

21. Some claimants are claiming for loss of income in respect of more than one employment that they held concurrently. The Panel noted that this employment practice was not uncommon in Kuwait and decided that a claimant is entitled to claim compensation in respect of more than one employment situation provided that the claimant could legally engage in and provide evidence of such employment, the remuneration earned, and establish that the loss is the direct result of the invasion and occupation of Kuwait. 16/

4. Claims for entitlements under a profit-sharing scheme

22. The Panel reviewed claims for loss of entitlements under a profit-sharing scheme that formed part of the remuneration owed to the claimant. In most cases this entitlement was confirmed by the claimant's employment contract. In considering whether claimants who were employed in Iraq or Kuwait prior to the invasion and occupation of Kuwait are entitled to compensation under such profit-sharing schemes, the Panel followed its determinations in the First Report where it held that in calculating a claimant's salary only amounts that are quantifiable in advance and can be allocated to a monthly income should be taken into consideration. 17/ The Panel held that since the annual profit of a company is an uncertain amount that cannot be allocated to a monthly income, the claimants would not be

entitled to compensation under D6(loss of income) for entitlements resulting from a profit-sharing scheme.

5. Contracts terminated by the Government of Kuwait

23. A number of claims were submitted by claimants who had been employed in Kuwait prior to the invasion and whose employment was terminated by the Government of Kuwait after 2 March 1991. The Panel held that since Governing Council decision 7 provides that only losses arising directly from Iraq's invasion and occupation of Kuwait are compensable, the post-liberation termination of the employment of such claimants was an act of the Government of Kuwait rather than an action of Iraq. Accordingly, the Panel determined that such claims are not eligible for compensation.

6. Claims for difference in salary received prior and subsequent to the invasion and occupation

24. The Panel considered four claims filed by the staff of an embassy operating in Iraq prior to the invasion and occupation of Kuwait. The claimants have claimed for the difference between the salary received while posted in Iraq and that received in their home country following their repatriation.

25. Since the four claimants in question did not lose their jobs but merely suffered a reduction in their salaries because of their repatriation from Iraq, the Panel concluded that the claimants are not entitled to compensation from the Commission.

7. Claims for additional benefits

26. A number of soldiers who were employed by the Kuwaiti Ministry of Defence have claimed under D6(loss of income) for allowances for weapons, medals and technical expertise as part of their basic salary entitlements. The contracts of some of these claimants provide that the claimants are entitled to these allowances by virtue of the "applicable army law".

27. After reviewing the claims, the Panel determined that since the referenced allowances were quantifiable, could be allocated to a monthly salary, 18/ and were incidental to the claimants' profession or occupation, they are compensable.

8. Claims for intellectual property

28. A number of claims have been submitted under D6(loss of income)["D6 (other)"] for the loss of intellectual property such as research materials, including, inter alia, collections of micro-organisms genetically modified for research, computer software libraries, manuscripts, experimental data and specimen. While some of these materials were acquired and used by the claimants in the course of their employment, others were not. In

considering whether these losses have been appropriately filed under D6(other), the Panel took the view that losses claimed under D6(other) should be limited to income pursuant to a contract of employment. Therefore, losses of the nature described above could be dealt with under D4(personal property) or D(other) or another appropriate loss type depending on the nature of items being claimed. The Panel therefore decided to deal with such claims on a case-by-case basis.

9. Claims for loss of "support"

29. Some claims presented to the Panel under D6(loss of income) also included claims for loss of support provided to others. The Panel takes the view that a claimant who has filed a claim for loss of income would not be entitled to claim for the support given to a family member or members since the support would have come out of the claimant's salary. Similarly, where someone has filed a claim for loss of income, a member of the claimant's family would not be entitled to claim for the loss of "support" because the "support" payment would have been paid from the claimant's income.

30. The Panel took note of the category "C" Panel's view 19/ that the following three categories of individuals were entitled to claim "support" on the C6 page of the category "C" claim form:

(a) gainfully employed persons whose ability to work has been permanently or temporarily affected as a result of a permanent or temporary disability or other injury;

(b) claims by persons who are not yet employed, but who, as a result of a permanent disability, may never be able to be fully employed; and

(c) claims by family members of income earners in Kuwait or Iraq who are unable to continue making certain payments such as alimony, regular dependant payments, subsistence payments, etc. to their family members, due to having lost their employment as a result of Iraq's invasion and occupation of Kuwait, or as a result of some permanent or temporary disability. In such circumstances, it must also be verified that the income earner has not filed a claim on his or her own behalf.

31. The Panel determined however that only those claims falling into group (c) above should be dealt with under D6(loss of income) while those falling into groups (a) and (b) would be re-categorized as D2 (personal injury) claims as they are more appropriately dealt with under that loss type.

10. Treatment of end of term indemnities

32. A number of claims for D6(loss of income) also include loss of end of service indemnities. Some of the claimants employed in Kuwait prior to the invasion and occupation of Kuwait ha e acknowledged receiving such end of term indemnities while others have not. In reviewing these claims, the Panel took note of information provided by the Government of Kuwait that it had paid end of service indemnities to certain non-Kuwaiti employees in the public sector who did not return to Kuwait for the purposes of employment. According to the Government of Kuwait, as at 1994, over 57,000 such employees had received their indemnities. 20/ The Panel further noted that the Government of Kuwait did not file a claim with the Commission for the reimbursement of these benefits to non-Kuwaitis.

33. In the light of the above information, the Panel has taken into consideration the fact that end of term indemnities had already been factored into the D6(loss of income) salary multiplier. The Panel therefore concluded that, where evidence exists that a claimant had received such end of term payments, they should be deducted from the recommended amount of compensation payable under D6(loss of income). The Panel has also instructed the secretariat to request the Government of Kuwait to confirm on a case-by-case basis whether those claimants who have filed D6(loss of income) claims and who were employed with the Kuwaiti Government prior to the invasion have received end of term benefits.

11. MPA Claims

34. Of the few D6(loss of income) claims for mental pain and anguish ("D6(MPA)") that were presented to it, the Panel found that only one claimant met the jurisdictional requirement laid down in Governing Council decision 3. 21/ According to that requirement, the claimant must prove that he/she was deprived of all economic resources so as to threaten seriously the claimant's survival and that of the spouse, child or parent, in cases where assistance from the claimant's Government or other sources has not been provided. The only successful D6(MPA) claimant provided documentary evidence which established that he had been totally deprived of all his economic resources which led to severe stress and resulted in the claimant having serious physical problems.

D. D(other) issues

1. Scholarships

35. The Panel considered whether claims for loss of scholarship allowances filed by individuals studying outside Kuwait are compensable. The claimants concerned asserted that as a result of the invasion and occupation, their monthly allowances were stopped and that they were forced to look for alternative means of funding their education.

36. The Panel determined that the inability of Kuwaiti authorities to continue the payment of such allowances constitutes a loss directly resulting from Iraq's invasion of Kuwait and that such claims are therefore compensable. The Panel further determined that for a claimant to be entitled to compensation for such loss, the claimant must provide appropriate documentary evidence of the existence and amount of the original scholarship as well as evidence of enrolment at another educational institution, and of the alternative means of funding. The claimant would only be entitled to compensation for the academic year immediately following the invasion of Kuwait.

2. Claims for additional education allowances

37. A number of claims have been filed for additional educational expenses on the basis that, since all educational institutions in Kuwait were closed, the claimants were forced to send their children to schools or universities outside Kuwait.

38. The Panel determined that such additional educational expenses are the direct result of the invasion and occupation of Kuwait and are therefore compensable. To be entitled to compensation for such additional educational expenses, the claimant must provide evidence of the child's pre-invasion enrolment in an educational institution in Kuwait indicating the tuition fees, evidence of the child's departure from Kuwait after the invasion, enrolment in another institution outside Kuwait and the fees paid to that institution. The claimant would only be entitled to compensation for the academic year following the invasion of Kuwait.

E. Deduction of compensation received

39. Some, but not all, of the claimants from one submitting entity have provided evidence of having received compensation from their Government for having been taken hostage in Iraq or Kuwait during the period of the invasion and occupation of Kuwait. The Panel considered firstly, whether the amounts received by such claimants from their Governments should be deducted from any compensation payable to them and secondly, whether those claimants who did not indicate that they had received such payments should be treated in the same manner.

40. The Panel held, firstly, that since claimants were required in the category "D" claim form to indicate if they had received any compensation from other sources in respect of the invasion and occupation, and secondly, since the Government concerned has confirmed the payment of such compensation, the amounts in question should be deducted from the recommended award for all the claimants concerned, whether they indicated receiving the payments or not.

III. D2(PERSONAL INJURY) LOSSES

A. Introduction and factual background

41. Fourteen of the claims in part one of the second instalment are for damages arising out of personal injury ("D2 claims"). The total number of D2 claims in the category "D" population is currently 361 with an asserted value of US$62,065,137.91. This amount does not include claims for MPA as there is no provision on the claim form for the claimant to assert amounts for MPA.

42. In paragraph 28 of the First Report, the Panel made reference to the severe reduction in health care facilities in Kuwait following Iraq's invasion and the fact that civilians who remained in Kuwait were frequently denied access to hospitals. The Panel also referred to numerous reports submitted regarding torture and cruel, inhuman and degrading treatment by Iraqi occupying forces resulting in serious injuries. The Panel has further considered a report on traumatic stress and mental health disorders in post-liberation Kuwait. 22/

43. The Panel also considered it relevant to take into account the report of the Panel of Experts that reviewed compensation for claims for MPA ("the MPA Panel") which was examined for the purpose of dealing with D3(Death) claims in the First Report. 23/ The Panel has therefore considered extensive background information in relation to its review of the D2 claims in the present instalment.

B. Applicable Governing Council decisions

44. The definition of "serious personal injury" is found in Governing Council decision 3 as follows:

> "Serious personal injury
>
> 1. 'Serious personal injury' means:
>
> (a) Dismemberment;
>
> (b) Permanent or temporary significant disfigurement, such as substantial change in one's outward appearance;
>
> (c) Permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;
>
> (d) Any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery.

2. For purposes of recovery before the Compensation Commission, 'serious personal injury' also includes instances of physical or mental injury arising from sexual assault, torture, aggravated physical assault, hostage-taking or illegal detention for more than three days or being forced to hide for more than three days on account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained.

3. 'Serious personal injury' does not include the following: bruises, simple strains and sprains, minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment."

45. With respect to claims for MPA in respect of serious personal injury, Governing Council decision 3 provides as follows:

"Mental pain and anguish

Compensation will be provided for pecuniary losses (including losses of income and medical expenses) resulting from mental pain and anguish. In addition, compensation will be provided for non-pecuniary injuries resulting from such mental pain and anguish as follows:

(a) A spouse, child or parent of the individual suffered death;

(b) The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;

(c) The individual suffered a sexual assault or aggravated assault or torture;

(d) The individual witnessed the intentional infliction of events described in subparagraphs (a) (b) or (c) on his or her spouse, child or parent."

46. Governing Council decision 8 24/ sets out the amounts payable for MPA in respect of serious personal injury to a claimant or in respect of witnessing a serious personal injury inflicted on his or her spouse, child or parent as follows:

CATEGORY A: A spouse, child or parent of the individual suffered death.

US$ 15,000 ceiling per claimant;

US$ 30,000 ceiling per family unit.

CATEGORY B: The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system.

US$15,000 ceiling for dismemberment, permanent significant disfigurement, or permanent loss of use or permanent limitation of use of a body organ, member, function or system;

US$5,000 ceiling for temporary significant disfigurement or temporary significant loss of use or limitation of use of a body organ, member, function or system.

CATEGORY C: The individual suffered sexual assault or aggravated assault or torture.

US$5,000 ceiling per incident.

CATEGORY D: The individual witnessed the intentional infliction of events described in Categories A, B or C on his or her spouse, child or parent.

US$2,500 ceiling per claimant;

US$5,000 ceiling per family unit."

47. The payments specified in Governing Council decision 8 are payable cumulatively where more than one situation applies with respect to particular claimants. However, the decision provides that an overall ceiling applies to the total cumulative amounts available to claimants for payments for MPA in the sum of US$30,000 per claimant, and US$60,000 per family unit.

C. Category "D" claim form requirements

48. D2 claims are covered by pages D2.1 and D2.2 of the category "D" claim form. The D2.1 page states that claimants who have submitted claims in category "B" for serious personal injury may also submit claims in category "D" if their losses exceed US$2,500. The types of injuries listed on page D2.1 of the claim form are as follows: dismemberment, disfigurement (permanent or temporary), loss or limited use of body organs (permanent or temporary), sexual assault, torture, and aggravated physical assault. Claimants are entitled to claim for medical expenses and for MPA in respect of the injuries listed, or as stated on the D2.2 page, for witnessing the intentional infliction of an injury on the claimant's spouse, child or parent.

49. In addition to the injuries listed, claimants may submit claims for other injuries requiring medical attention, though there is no provision on the form to claim MPA in respect of such injuries. The form also provides for claims for lost earnings or future profits arising from the injury.

50. The instructions on the D2.1 page of the claim form require the claimant to submit a statement describing what happened to the claimant, and the nature and extent of the injury. The claimant is also required to submit a separate sworn statement and/or sworn statements of any witnesses to the cause and circumstances of the injury, and appropriate documentary evidence such as certificates issued by a doctor, hospital or other medical care provider, or medical or insurance records.

51. Where the claim is for medical expenses, the claimant is advised to provide itemized bills of expenses incurred, receipts of payments made, photographs and a doctor's report. Claims for MPA and for lost earnings or future profits must also be substantiated by documentary and other appropriate evidence. If the claim is for MPA for witnessing the intentional infliction of an injury to a family member, the claimant is required to give the name and identification details of the family member, and a description of the injury and circumstances in which it occurred. The claimant is also asked on the D2.2 page to enter information concerning any insurance claim that the claimant may have made in respect of the injury.

D. Factual description of D2 claims

52. The D2 claims in part one of the second instalment are claims largely for the loss of future income whereby each claimant asserts that he or she is either partially or totally disabled because of injuries suffered as a result of Iraq's invasion and occupation of Kuwait. The claims are for reduced earnings where the claimant is partially disabled, or for a total loss of earning capacity where the claimant is unable to work at all.

53. Claimants have made claims in respect of personal injuries as a result of the following occurrences: being shot or beaten by Iraqi soldiers; land mine explosions; physical or psychological disorders brought on by stressful situations experienced in Kuwait, and for similar disorders or heart attacks brought on by scud missile attacks on Israel. Some claimants had pre-existing conditions at the time of the invasion that they claim were exacerbated due to lack of medical treatment, or due to stress that they suffered as a result of fear for their safety at the time of the invasion and occupation.

54. All the D2 claims in part one of the second instalment are well documented. They contain personal statements from the claimants describing what happened to them and the nature and extent of the injuries. A few of the claims contain witness statements.

55. All of the claimants have submitted medical reports from doctors, hospitals or a Government authority describing the nature and extent of their injuries, the types of treatment given to the claimants, and a prognosis. Where the claim is for loss of income and the claimant was employed prior to suffering the injury, each claimant has submitted evidence of a reduction in salary, where applicable, or of the prior level of remuneration forming the basis of a claim for a total loss of future income.

56. Three claimants submitted claims for Post Traumatic Stress Disorder ("PTSD") caused or exacerbated by scud missile attacks on Israel. Owing to the mental state of these claimants, they submitted their claims through authorized representatives. Another claimant submitted a claim on behalf of his son who was injured and was still a minor at the time the claim was filed.

57. Claims for the loss of future income have also been submitted by persons who were not employed at the time of injury due to the fact that they were minors, students, or beyond the age of employment. The claimants have provided proof of the fact that they were injured as well as medical certificates describing the percentage disability.

E. D2 Methodology

58. Having reviewed the D2 claims in the second instalment, the instructions set out on the category "D" claim form, the factual, background, and other reports mentioned above, the relevant Governing Council decisions and applicable Rules, and the methodology adopted by the category "B" and "C" Panels, the Panel adopts the D2 methodology set out below.

1. Preconditions

(a) Definition of serious personal injury

59. D2 claims for personal injury should only be compensable where the injury falls within the definition of serious personal injury set out in Governing Council decision 3.

(b) Fact of injury

60. Claimants must prove that the injury occurred. Proof should be in the form of a statement from the claimant and/or witness statements describing what happened to the claimant and the nature and extent of the injury. The claimant should submit medical reports from doctors, hospitals, or other health care providers confirming the nature and extent of the injury and the effect of the injury on the claimant.

(c) Injury to have occurred during the jurisdictional period

61. The claimant should submit proof that the injury occurred during the jurisdictional period (i.e., between 2 August 1990 and 2 March 1991). Where the injury occurred outside the jurisdictional period, claimants will have an added burden of showing why the injury should be regarded as resulting directly from the invasion and occupation of Kuwait. In the context of resolving claims for death, the Panel has already determined that, consistent with Governing Council decision 12 25/, claims arising out of land mine explosions that occurred outside the jurisdictional period are compensable. The same principle would apply to claims for personal injuries.

(d) Causation

62. To be compensable, the injury must have been suffered as a direct result of Iraq's invasion and occupation of Kuwait and claimants are required to submit evidence to that effect. As stated by the Panel in the First Report in the context of D3(death) claims, if the loss is direct, it is compensable regardless of the location in which the claimant suffered the loss or damage. 26/ Accordingly, D2 claims arising out of military attacks on Israel are also compensable.

(e) Only the injured person should claim

63. D2 claims should be submitted only by the individual who suffered the serious personal injury. However, under the normal rules pertaining to minors and persons who are otherwise unable to submit a claim for themselves, an authorized representative can submit the claim. In such situations, any compensation awarded should be awarded only to the individual who suffered the injury.

2. Valuation

(a) Claims for medical expenses

64. For D2 claims for medical expenses where the claimants have proven the fact of injury and that the injury resulted directly from the invasion and occupation, the claimant should submit evidence in the form of medical bills or receipts for amounts paid.

65. Taking into consideration the fact that there were few medical records kept in Kuwait during the period of the invasion and occupation, 27/ where the claimant was in Kuwait and has proved the fact of the injury but is unable to provide adequate documentary evidence of medical expenses, the claimant should provide details of the amounts spent as well as the medical services provided. Claimants who were outside Kuwait during the occupation would ordinarily be required to provide direct documentary evidence of their injuries and medical expenses.

(b) Claims for loss of future income or profits

66. Claims for the loss of future income or profits should be compensable where the claimant has submitted proof from a doctor stating that the claimant is partially or totally disabled, and certifying the extent to which the claimant is able or unable to work. In developing the methodology for D3(death) claims, the experts retained to assist the Panel also recommended a methodology for calculating loss of income in cases of personal injury, similar to that developed for loss of support in D3(death) claims.

67. In accordance with the recommendation made by the experts, in cases where the claimant is totally disabled, he or she should submit evidence of employment and salary received prior to suffering the injury. Where the claimant is only partially disabled, the claimant should submit evidence of employment and of the claimant's salary before and after the injury, demonstrating any reduction in salary due to partial disability. In both cases, compensation would be calculated based on the present value of the claimant's future income, with a percentage reduction that reflects the extent to which the claimant is able to work in cases of partial disability. 28/

68. Consistent with its view set out in the First Report, the Panel has determined that the same discount rate and life expectancy tables as those adopted by the Panel for use in determining compensation for loss of support for D3(death) claims should be applied in the case of D2 claims. The Panel has also retained the same groupings for the submitting entities that have filed D2 claims on behalf of their nationals and residents. Where the claim is only for partial disability, a percentage representing the extent of the claimant's disability is applied to the income in calculating the amount to be awarded to the claimant.

69. In cases where the claimant is partially disabled, the Panel studied the treatment of disabilities in several countries and found that each country applied a different percentage disability to the same type of injury. 29/ In order to ensure consistency in the percentage representing disability that would be applied to all claimants, the Panel developed its own "Table of Maims" taking into consideration the rates applied in the entities covered by the study. Where a serious personal injury is not covered by the Panel's table, the percentage to be applied will be separately determined by the Panel.

70. As stated above, some of the D2 claims are on behalf of persons who were not employed at the time of injury and are either partially or totally disabled. In some claims there is medical evidence to the effect that it is unlikely that the claimant will ever be able to work. In such cases the Panel has determined that a "deemed income" will be attributed to the claimant for purposes of calculating the present value of the future income that the claimant would have earned. The "deemed income" is determined by

taking into account the age of the claimant and the average annual salary applicable in the country where the claimant was likely to be employed.

(c) Claims for exacerbation of a pre-existing condition

71. Where the claimant has a pre-existing condition and has proved that the condition was exacerbated as a result of the invasion and occupation, the Panel will determine in accordance with the evidence provided the extent to which the deterioration in the claimant's condition is a result of the invasion and occupation. Where the claim is for a loss of future income, the Panel will determine the percentage representing disability to be applied in calculating the compensation to be awarded.

(d) Claims for serious personal injuries of a temporary nature

72. Where the claimant suffered a serious personal injury of a temporary nature, the Panel will recommend the award of a lump sum depending on the nature and duration of the injury suffered by the claimant.

3. Claims for MPA

(a) MPA for serious personal injury

73. Claimants are required to indicate on the claim form whether in addition to their claim for personal injury, they also seek compensation for MPA in respect of the same personal injury and to provide appropriate documentary evidence to support the claim for MPA.

(b) Claims for MPA for witnessing the intentional infliction of events leading to a serious personal injury

74. Some claimants have submitted claims for MPA for witnessing the intentional infliction of events leading to the injury of the claimant's spouse, child or parent in cases where the injury was the result of scud missiles fired against Israel by Iraq. In such cases the Panel determined that the claims would be compensable. However, the claimant must prove the fact of injury with appropriate medical evidence, the family relationship to the injured person and MPA suffered. In three cases considered by the Panel, although it has recommended an award of compensation to each claimant suffering the injury, the Panel considered there was insufficient evidence of the MPA claimed by a relative.

(c) Valuation of MPA

75. Where the claimant has satisfied the requirements set out in (a) and (b) above, the Panel would recommend the award of appropriate compensation based on the amount specified in Governing Council decision 8.

F. Panel determinations with regard to D2 claims

76. The D2 claims reviewed by the Panel in part one of the second instalment were well documented. The Panel found that all the D2 claims in part one of the second instalment were compensable to the extent that they met the prescribed evidentiary standards. Where the claim was for medical expenses, compensation was recommended for amounts substantiated by appropriate documentary and other evidence. The amounts recommended as compensation for the loss of future income were calculated pursuant to the valuation criteria described above. In respect of one claim where the injured claimant's condition was temporary, the Panel has recommended a lump sum award. Where the evidence showed it was uncertain whether the claimant's injury would develop into a permanent disability but the claim was limited to compensation for the loss of income for the period that the claimant was unable to work up to the time of submitting his claim, the Panel has recommended an award of the amount claimed. The Panel rejected a claim for the loss of rental income arising from the fact that the claimant had to return to his home country and reside in his house, which he had been renting out, as he could no longer work in Kuwait due to a personal injury.

IV. D5 CLAIMS FOR LOSS OF BANK ACCOUNTS, STOCKS AND OTHER SECURITIES

A. Introduction and factual background

77. There are 15 D5 claims for loss of bank accounts, stocks and other securities in part one of the second instalment ("D5 claims"). The total number of D5 claims in the category "D" claims population is currently 417, with an asserted value of US$60,930,288.67.

78. The Background Reports considered in the First Report provide some information on banking operations in Kuwait at the time of the invasion and occupation, as well as after the liberation of Kuwait, and state that there was little information available on banking operations in Iraq. 30/ At the time of the invasion on 2 August 1990, many persons left Kuwait under emergency conditions and, as it was a weekend in Kuwait, were not able to withdraw funds from their bank accounts. The majority of the banks in Kuwait remained closed during the period of the occupation. The assets of Kuwaiti banks in many countries were frozen, and banks outside Kuwait did not have access to bank records for customers with funds on deposit in Kuwait.

79. According to a letter dated 15 October 1991 from the Government of Kuwait addressed to the Executive Secretary of the Commission, banks resumed operations on 24 March 1991. 31/ All bank account deposits were restored to their pre-invasion balances where forced withdrawals had been made, and interest for the period of the occupation was calculated and added to each account. Withdrawals from bank accounts were restricted for

a period of five months until 3 August 1991. After that date, persons in Kuwait were able to withdraw their funds without restriction. 32/

80. For foreign account holders who had not returned to Kuwait, the Government of Kuwait informed the Commission that Kuwaiti banks adopted measures, under the direction of the Central Bank of Kuwait, to make funds in bank accounts freely available to the beneficiaries of those accounts. The Kuwaiti Government has stated that the following procedures were implemented to allow foreign account holders to withdraw their funds in Kuwaiti banks:

i. an account holder completes a withdrawal request at the correspondent bank, stating the available account details, the name of the bank and the branch concerned;

ii. the account holder signs the request form to be verified by the correspondent bank;

iii. the correspondent bank transmits the request to the Kuwaiti bank concerned; and

iv. the Kuwaiti bank transfers the funds as requested by the account holder as soon as the request can be processed. 33/

81. By letter dated 25 October 1991, the secretariat informed over 80 Governments, believed to have claimants eligible to submit bank account claims, of the procedures instituted by the Central Bank of Kuwait to enable access to foreign nationals formerly resident in Kuwait.

82. A further letter dated 19 April 1993 was sent to the Commission by the Deputy Chief of the Kuwaiti Banks Committee, who identified alternative procedures that may be followed by account holders for withdrawing their funds. According to these procedures, account holders should:

I. write a letter to the bank signed by the customer/account holder;

ii. provide a resident inside Kuwait with a Power of Attorney authenticated by an Embassy of Kuwait abroad which states clearly that the representative may withdraw the funds from the bank;

iii. take necessary measures in coordination with a local correspondent bank.

83. The letter further states that "[i]n all circumstances, any proposal submitted by the customer should meet all the information and documentation relevant to the accounts."

84. While there is little information on banking operations in Iraq during the occupation, Iraqi banks and their branch offices continue to be subject to the United Nations' sanctions and economic embargo enacted pursuant to Security Council re lution 661 (1990), the national sanctions implemented by certain countries ursuant thereto, and to provisions of various Iraqi domestic laws.

B. Applicable Governing Council decisions

85. There are no specific Governing Council decisions in respect of D5 claims for loss of bank accounts, stocks and other securities. Therefore, the general criteria for determining the compensability of all category "D" claims as set out in Governing Council decision 7 applies to D5 claims.

C. Category "D" claim form requirements

86. With respect to bank accounts, the category "D" claim form requires claimants to give details of the account holder, the bank name and address, the type of account and account numbers. Claimants are requested to attach documentary evidence of ownership, such as a photocopy of a bank passbook or balance statement, and to document the attempts made by the claimant to withdraw funds from the account(s). The claimant should provide the dates on which such attempts were made.

87. Where the claim is for stocks and other securities, claimants are requested to provide the name of the issuer, details of the quantity of stocks, their value on 1 August 1990, and the amount of loss.

D. Description of the D5 claims

88. One of the D5 claims in the second instalment was made by a claimant who requested the assistance of the Commission in locating bank accounts in Kuwait and Egypt belonging to his father, grandfather and mother who are all deceased.

89. Another claim is in respect of a bank account held in Iraq. The claimant left Iraq during the invasion and occupation and seeks the Commission's assistance in getting his funds transferred from Iraq where the claimant states that the laws prohibit taking money out of the country.

90. There are four claims in respect of cheques issued by persons who were living in Kuwait drawn on banks in Kuwait. The claimants state they were not able to cash the cheques due to the invasion and occupation. Some of the cheques were dated before the invasion and occupation, while others have dates that fell within the period of the occupation. One claimant stated that he had been unable to cash the cheques prior to the invasion due to the fact that he was waiting for certain transactions to be concluded by his company, but that he then left Kuwait after the invasion and did not return. The remaining claimants stated that they had attempted

to find the debtors without success, or that the debtor was in financial difficulties due to the invasion and occupation.

91. There are four claims in respect of investments in stocks and securities. One claimant was taken hostage and claims that he was not able to exercise options under warrants held by him. The claimant also traded on his own account and stated that he normally made large sums of money thereby, but that he was unable to trade during the invasion and occupation. The claimant did not provide any proof of the amounts that he asserted he lost in respect of the income that he normally made on the markets by trading on his own account.

92. The remaining three claims in respect of investments are for a loss or diminution in the value of equity investments in or with Kuwaiti companies. In all three cases, the companies wrote to the claimants offering a settlement and stating that their businesses were affected by the "Gulf War". The companies have not submitted claims to the Commission.

93. Four claimants submitted claims in respect of benefits lost due to the fact that they had left Kuwait and could no longer maintain payments on insurance policies in Kuwait after the invasion and occupation. As a result, they were paid an amount in settlement of what they had paid on the policies and did not receive the benefits that would have been paid had the policies matured. Two of the claimants were not recalled to Kuwait to resume their employment, while the other two claimants state that they were unable to continue the payments due to their strained economic circumstances after leaving Kuwait. The claimants provided insurance contracts showing the sums that they would have received on the maturity of the policies, and confirmation that the benefits to be paid on maturity included a bonus that was added to the sum assured on an annual basis.

E. Methodology for D5 claims

94. The D5 loss type covers losses for bank accounts, stocks and other securities. As the subject matter of each type of claim is distinct, the Panel considered it desirable to divide D5 claims into three groups: claims for bank accounts in Kuwait; claims for bank accounts in Iraq; and claims for stocks and other securities. The Panel has developed a methodology for each group of claims according to the subject matter. The issues to be decided for these groups of claims in respect of ownership, loss and causation are dealt with separately hereafter.

95. Having reviewed the D5 claims in part one of the second instalment, the instructions set out in the category "D" claim form, the factual background described in the Background Reports, the applicable Rules and Governing Council decisions, and the methodologies adopted by the category "C" Panel, the Panel adopts the methodology set out hereafter.

1. Claims for bank accounts in Kuwait

(a) Ownership

96. In accordance with the requirements on the claim form, the claimant must prove ownership of a bank account in Kuwait. As stated on the claim form, proof could be in the form of a photocopy of a bank passbook or balance statement.

(b) Loss

97. In view of the procedures notified by the Government of Kuwait as to how claimants can recover amounts in their bank accounts in Kuwait, the Panel concurs with the views of the category "C" Panel and the "F1" Panel 34/, which accepted as adequate the procedures that have been implemented by the Central Bank of Kuwait in respect of recovering balances in bank accounts in Kuwait.

98. The Panel has accordingly directed the secretariat to write to any claimant that has submitted claims for bank accounts in Kuwait to inform them of the procedures implemented by the Central Bank of Kuwait for the recovery of such accounts.

(c) Causation

99. If a claimant is able to show that he or she has complied with the procedures established by the Central Bank of Kuwait but has still been denied access to his or her bank account in Kuwait, in order for the claim to be eligible for compensation, the claimant will have to prove that the denial of access to the claimant's funds is directly due to the invasion and occupation of Kuwait. The Panel will review such claims on a case-by-case basis.

2. Claims for bank accounts in Iraq

(a) Ownership

100. In accordance with the requirements on the claim form, the claimant must prove ownership of the bank account in Iraq. The claim form states that proof could be in the form of a photocopy of a bank passbook or balance statement.

101. In cases where claimants cannot provide direct documentary evidence that they owned the bank account, correspondence between the claimant and the bank would also be considered by the Panel to be an acceptable basis for proving ownership if the bank's response is an acknowledgment of the claimant's entitlement to act in respect of the account.

(b) Loss

102. The claimant should submit proof that the account has been lost. The claim form asks the claimant to describe the efforts that he or she has made to recover the account.

(c) Causation

103. Pursuant to Governing Council decision 7, claimants must show that the loss was a direct result of Iraq's invasion and occupation of Kuwait. Consistent with the view expressed by the "E2" Panel, in the first instalment of "E2" claims 35/, the Panel took the view that any claimant seeking compensation for loss of bank accounts because of inability to transfer his funds out of Iraq must show that any prohibition on transfer was a direct result of Iraq's invasion and occupation of Kuwait.

3. Claims for stocks and other securities

(a) Ownership

104. As with claims for the loss of bank accounts, claimants should submit proof of ownership of stocks or other securities held by them. Claimants in part one of the second instalment provided proof of ownership in the form of certificates issued by institutions in or with which they had made investments, together with correspondence concerning any settlements offered by the institutions in respect of the claimant's investment. Where the claims were in respect of uncashed cheques, claimants submitted copies of the cheques made out in their favour.

(b) Loss

105. Where the claim is for losses arising out of equity investments, the Panel has established the following principles to deal with such claims: where the company that was the subject of the investment is still in existence and the losses suffered by the claimant are deemed to be indirect, the rightful claimant, if any, would be the company in which the claimant had invested; where the company is no longer in existence, the claimant must prove that the dissolution of the company was a direct result of the invasion and occupation of Kuwait.

106. With respect to claims for cheques that could not be cashed due to the invasion and occupation of Kuwait, claimants are ordinarily under an obligation to present the cheque for payment. If the bank failed to honour the cheque, then the claimant should refer back to the drawer for information on the failure to honour the cheque. In order for such claims to be compensable, a claimant would have to prove that his or her inability to cash the cheque was due to the non-existence or disappearance of the drawer. Documentary evidence would have to be provided showing that the drawer had either gone bankrupt, died or disappeared as a result of the

invasion and occupation. In addition, a claimant should provide the original of the cheque together with proof that non-payment was due to the invasion and occupation.

(c) Causation

107. In order for a loss of stocks and other securities to be compensable, claimants must prove that the loss is a direct result of Iraq's invasion and occupation of Kuwait. In cases where the claimant is unable to recover the amounts due under cheques because the bank has failed to honour the cheque and the claimant states that he cannot recover the sums from the drawer of the cheque, the claim would only be compensable if the claimant proves that the drawer is no longer in existence or has disappeared as a result of the invasion and occupation. Where the drawer has gone into liquidation, the claimant will have to show that the failure of the business was caused directly by the invasion and occupation.

4. Valuation of D5 claims

108. As each D5 claim is for a different type of loss and the underlying documents giving rise to the claim are valued in different ways, each claim will be valued on an individual basis in accordance with the type of transaction and the evidence of loss submitted by the claimant.

5. Panel determinations with regard to D5 claims

109. The Panel reviewed each claim in accordance with the methodology set out above.

110. With respect to the claim for assistance in locating bank accounts in Kuwait, the claimant had submitted letters from banks in Kuwait acknowledging that the banks had accounts in the name of the claimant's grandfather. The Panel directed the secretariat to write to the claimant and inform him of the procedures introduced by the authorities in Kuwait for obtaining access to bank accounts in that country and to establish his right to the funds in the various accounts. The request for assistance in respect of bank accounts in Egypt is outside the jurisdiction of the Commission.

111. The Panel rejected the claim for losses arising from the bank account held by a claimant in Iraq. The claimant did not submit proof of the efforts that he had made to gain access to his bank accounts in Iraq or of whether his inability to transfer his funds out of Iraq was the direct result of the invasion and occupation of Kuwait by Iraq. The Panel did not consider that the Commission could assist him in any way in securing the transfer of his bank account balance in Iraq.

112. With respect to the claim for loss of the opportunity to exercise options under warrants held by the claimant at the time of the invasion and

occupation, or to trade on the markets, the Panel found that these losses were of a speculative nature and furthermore, that the claimant had submitted insufficient proof of the amounts that he claimed he would have made had he exercised the options or been able to trade on the markets. The claim was therefore denied by the Panel.

113. The Panel found that in each of the three claims for losses arising out of equity investments in Kuwait, the claimants had accepted settlements in respect of the diminution in the value of their investments. In one instance the company was still in existence, and, therefore, the company should have submitted a claim for losses suffered; in another case the claimant had been referred to the Central Bank of Kuwait as the agency that was handling the losses of the company in which the claimant had invested; and in the third claim, the shareholders should have appointed a representative to submit a claim on their behalf. Accordingly, all three equity investment claims were denied by the Panel.

114. Where claims were filed by claimants for benefits under insurance policies, the Panel determined that such losses were too remote and, as the claimants had entered into settlements with their insurance companies whereby they were refunded all of the premiums paid by them on the policies, the losses claimed were not compensable. 36/

115. With respect to the claims for cheques, the claimants had only submitted copies of the cheques, had not presented them during their validity period and although they stated that they had attempted to find the drawers and failed to do so, or that the debtors were no longer in existence due to the invasion and occupation, the claimants did not provide adequate proof of the circumstances of loss. Accordingly such claims were rejected by the Panel.

VI. RECOMMENDATIONS

A. Awards by submitting entity

116. The Annex hereto lists the awards recommended by the Panel for each submitting Government and international organization for claimants included in part one of the second instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be noted from the Annex, against the total amount claimed of US$46,101,744.00, the Panel has recommended the award of a total amount of US$11,182,109.00.

B. Interest

117. The Panel recommends that interest be awarded pursuant to its determinations as set out in chapter H of the First Report and that due to the number of claims in category "D", it is not possible to calculate the date of loss and therefore the date from which interest accrues

individually for each claim. The Panel concluded, therefore, that "the date the loss occurred" as used in Governing Council decision 16 37/ should be a single fixed date for all category "D" claims. 38/ The Panel accordingly determined that the date of the invasion, 2 August 1990, shall serve as the date from which interes accrues for category "D" claims.

C. Submission through the Executive Secretary to the Governing Council

118. The Panel respectfully submits this report through the Executive Secretary to the Governing Council pursuant to article 38(c) of the Rules.

Geneva, 29 July 1998

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ For a complete description of the category "D" claim loss types, see the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/1), ("the First Report"), para. 10.

3/ A firm of loss adjusters was appointed to assist the Panel in developing the methodology for the valuation of D4(personal property) claims.

4/ S/AC.26/1998/1.

5/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/3).

6/ The Panel issued Procedural Order No. 3, dated 5 February 1998, informing each submitting entity that their claims were included in the second instalment. By Procedural Order No. 4, dated 29 July 1998, the Panel informed each submitting entity with D4(personal property) claims that the second instalment would be split into two parts and also deferred one claim in the second instalment that included losses that the Panel would not be resolving in this instalment.

7/ The claim concerned contains D8/9(business) losses for which the Panel has still to develop a methodology.

8/ The Panel listed the Background Reports in note 6 of the First Report.

9/ S/AC.26/1991/7/Rev.1.

10/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1996/3), paras. 27-33.

11/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1998/6), paras. 13-15.

12/ The Motor Vehicle Valuation Table provides the standard market values of motor vehicles in Kuwait for the years 1980 to 1990 according to the make, model and the year of the vehicles. The values have been depreciated to reflect the market value of the vehicles as of August 1990.

13/ The First Report, paras. 330-334.

14/ S/AC.26/1992/9; S/AC.26/1992/15.

15/ This is consistent with the findings of the Panel of Commissioners appointed to review the first instalment of E2 claims (the "E2" Panel) contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E2' Claims" (S/AC.26/1998/7), concerning the scope of the embargo. The "E2" Panel found that the trade embargo "applies only to the import or export of goods or capital into or from Iraq after 6 August 1990", concluding that by Security Council resolution 661(1990), the Security Council intended to capture within the prohibitions of the resolution only activity consisting

of or leading to the import or export of goods or capital into or from Iraq.

16/ The First Report, paras. 300-334.

17/ Ibid., para. 334.

18/ Ibid.

19/ "The Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1994/3 and Corr.1), (the "First 'C' Report"), p. 178.

20/ Ibid., p. 173.

21/ S/AC.26/1991/3.

22/ "The Traumatic Events and Mental Health Consequences Resulting from Iraqi Invasion and Occupation of Kuwait", report was prepared by the Al-Riggae Specialized Center for Treatment of War Victims in Kuwait, Ministry of Health, dated 1 December 1993 (the "Al-Riggae Report").

23/ The First Report, paras. 235 and 236.

24/ S/AC.26/1992/8.

25/ See First Report, para. 201.

26/ See First Report, para. 202.

27/ See "Recommendations Made by the Panel of Commissioners Concerning Individual Claims For Serious Personal Injury or Death (Category 'B' Claims)" (S/AC.26/1994/1), p.33 and the First "C" Report, p.108.

28/ The methodology adopted by the Panel in respect of D3(death) claims for loss of support was described at paras. 212-222 of the First Report. The parts of the methodology which would be applied in calculating the compensation to be awarded to D2 claimants are contained in paras 215-217.

29/ The Panel compared the tables listing the percentage of disability associated with different types of injury ("Table of Maims")used in Egypt, Kuwait, Lebanon and by the United Nations. The differences in the percentage of disability attributed to the same injury varied between four per cent and ten per cent amongst the four entities.

30/ See the First "C" Report, pp. 159-167.

31/ Letter from the Public Authority For Assessment of Compensation Resulting From Iraqi Aggression ("PAAC") to the Executive Secretary of the Commission dated 15 October 1991, together with an attachment entitled "Actions Taken in Kuwait Regarding Customer Accounts with Kuwaiti Banks".

32/ Ibid.

33/ Ibid.

34/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6) (the

"First 'F' Report"). One of the claimants in category "F" submitted a claim stating that it was unable to access funds in its bank account in Kuwait. In resolving the claim, the "F1" Panel accepted PAAC's explanation regarding the procedures put in place by the Central Bank of Kuwait and requested the secretariat to communicate this information to the claimant.

35/ S/AC.26/1998/7.

36/ In its decision on claims by insurance companies in respect of losses suffered through the accelerated maturity of policies resulting from premature deaths caused by acts of Germany in sinking the Lusitania, (The Life Insurance Claims (1924)), the German-United States Mixed Claims Commission (1922) held that the accelerated maturity of insurance policies was not directly attributable to the sinking of the Lusitania by Germany. See B. Cheng, General Principles of Law as Applied International Courts and Tribunals, (London, Stevens and Sons, 1953), (reprinted by Grotius Publications, 1987), p.245.

37/ S/AC.26/1991/16.

38/ The category "C" Panel also found this; see the First "C" Report, pp. 32-33. In the WBC Claim a mid-point date of 15 October 1991 was used. See the "Report and Recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control Claim" (the "'WBC' Claim") (S/AC.26/1996/5/Annex). In that claim, however, the losses were quite different from those suffered by individuals in categories "C" and "D," and different criteria therefore applied to the determination of relevant dates.

Annex

Summary Recommendations of Part One of the Second Instalment of Category "D" Claims

Submitting Entity	Amount Claimed (US$)	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Australia	185,942	1	3	19,409
Canada	955,140	1	3	51,900
Denmark	92,571	1	--	25,086
France	86,584	1	--	58,338
India	5,767,541	24	--	524,074
Ireland	4,650	1	--	4,650
Israel	4,251,997	4	--	596,514
Italy	951,273	1	4	41,107
Jordan	11,867,165	35	12 1/	1,847,662
Kuwait	5,148,182	55	--	2,915,801
Lebanon	299,678	2	1	122,360
Pakistan 2/	71,910	2	--	117,799
Poland	252,209	1	--	25,494
Sudan	6,004,115	22	3	1,116,213
Sweden	770,000	--	1	0
Syria	487,580	5	--	243,744
United Kingdom	4,651,718	29	1	1,604,892
United States of America	3,905,646	32	2	1,761,189
UNRWA (Gaza)	347,843	2	1	105,876
Total	46,101,744	219	31	11,182,109

1/ One claim from the Hashemite Kingdom of Jordan has been deferred.

2/ Represents D6 claims where the claimant has also made a C6 claim; the "Amount Claimed" is the amount claimed in category "D"; the "Amount of Compensation Recommended" is the amount recommended to be awarded in category "D", calculated on the basis of the claims made both in categories "C" and "D" and where the C6 claim has not yet been decided. The compensation awarded in the C6 claim, if any, will be deducted from the D6 award prior to the payment of such award.

Annex II

Decision concerning part one of the second instalment of individual claims for damages above $100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 81st meeting, held on 30 September 1998 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the third report of the Panel of Commissioners appointed to review individual claims for damages above US$100,000 (category "D" claims), covering 250 individual claims, 1/

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amount of the recommended awards concerning 219 claims included in the report. The aggregate amounts per country or international organization, as listed in the annex of the report, are as follows:

Government or international organization	Amount Claimed (US$)	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Australia	185,942	1	3	19,409
Canada	955,140	1	3	51,900
Denmark	92,571	1	--	25,086
France	86,584	1	--	58,338

* Previously issued as document S/AC.26/Dec.55 (1998).

1/ The text of the report appears in document S/AC.26/1998/11 [see annex I]. In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and individual organization separately.

Government or international organization	Amount Claimed (US$)	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
India	5,767,541	24	--	524,074
Ireland	4,650	1	--	4,650
Israel	4,251,997	4	--	596,514
Italy	951,273	1	4	41,107
Jordan	11,867,165	35	12	1,847,662
Kuwait	5,148,182	55	--	2,915,801
Lebanon	299,678	2	1	122,360
Pakistan	71,910	2	--	117,799
Poland	252,209	1	--	25,494
Sudan	6,004,115	22	3	1,116,213
Sweden	770,000	--	1	0
Syria	487,580	5	--	243,744
United Kingdom	4,651,718	29	1	1,604,892
United States of America	3,905,646	32	2	1,761,189
UNRWA (Gaza)	347,843	2	1	105,876
Total	46,101,744	219	31	11,182,109

3. Reaffirms that when funds become available payments shall be made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)],

4. Recalls that when payments are made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of Decision 18 [S/AC.26/Dec.18 (1994)], Governments and international organizations shall distribute amounts received in respect of the approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made at this stage for one claim referred to in paragraph six of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General and the Government of the Republic of Iraq and copies of the report and the tables containing the breakdown of the amounts to be paid to each individual claimant to each respective Government and international organization.

Annex III

Report and recommendations of the Panel of Commissioners concerning the second instalment of "F1" claims*

* Previously issued as document S/AC.26/1998/12.

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Introduction

1. This is the third report submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review "F1" claims (the "Panel"). This report deals with the second instalment of "F1" claims.

2. The second instalment of claims was presented to the Panel in accordance with article 32 of the Rules on 30 January 1998. The instalment consists of the following seventeen claims (the "Claims") filed by fifteen Governments (the "Claimants") for a total amount of approximately 153 million United States dollars (US$). The approximate amount of compensation sought is indicated in parentheses after every claim. 2/

(a) Australia: Department of Foreign Affairs and Trade (two claims, one for US$563,329 ("Claim I") and the other for US$10,684 ("Claim II");

(b) The Republic of Austria: Foreign Trade Department (US$155,598);

(c) The Republic of Cyprus: Ministry of Communications and Works (US$267,156);

(d) The Czech Republic 3/: Ministry of Foreign Affairs (US$11,208);

(e) The Republic of India: Ministry of External Affairs (US$137,023,322);

(f) Ireland: Department of Foreign Affairs (US$557,955);

(g) The Italian Republic: Ministry of Foreign Affairs (US$659,303);

(h) Japan: Ministry of Foreign Affairs (US$1,431,252);

(i) The Republic of Korea: Ministry of Foreign Affairs (US$1,502,895);

(j) The Kingdom of Norway: Ministry of Foreign Affairs (US$157,217);

(k) The Republic of Poland: Ministry of Foreign Economic Relations, Office of Budget and Administration (US$1,824,720) and Ministry of Foreign Affairs, Administration and Finance Department (US$177,590);

(l) The Russian Federation: Ministry of Foreign Economic Relations (US$8,050,606);

(m) The Kingdom of Sweden: Ministry for Foreign Affairs (US$500,191);

(n) The United Kingdom of Great Britain and Northern Ireland: British Council (US$55,688); and

(o) The United States of America: Department of Commerce (US$94,442 plus interest).

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims to the Governing Council in his reports of 31 October 1996, 31 January 1997 and 30 April 1997. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted additional information and views on the reports.

4. On 30 January 1998, the Panel issued procedural orders informing the Claimants that their claims were under review and classifying the Claims. The Panel determined that, with the exception of the claim submitted by the Government of India, it would review the Claims within 180 days, in accordance with article 38(c) of the Rules. In view of the amount of compensation sought and the anticipated complexity of the verification issues raised, the Panel classified the claim of the Indian Ministry of External Affairs as "unusually large or complex" pursuant to article 38(d) of the Rules.

5. In the course of the preliminary review of the Claims, it was noted that several Claimants sought compensation for costs incurred in evacuating individuals and for payments made to reimburse Government employees for the loss of personal property. As the individuals concerned might themselves have filed individual claims with the Commission in categories "C" and "D" for the same losses, the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of category "C" or "D" claims. 4/

6. To avoid multiple recovery of compensation across categories, the procedural orders issued on 30 January 1998 also requested those Claimants seeking compensation for the evacuation of individuals or for reimbursements for individuals' losses of personal property to provide identification information which would enable the Panel to ascertain that compensation was not being sought for the same losses in other categories within the Commission. The relevant Claimants were requested to submit their responses by 31 March 1998.

7. Responses were received from all Claimants. On the basis of the responses it was ascertained that eight individuals had filed category "C" claims for losses which had either been incurred by their Government or in

respect of which they had received compensation from their Government. 5/ Appropriate deductions were made from the relevant Government claims in this instalment to avoid multiple recovery. 6/

8. The responses also enabled the secretariat to ascertain that five individuals were seeking compensatio. in category "D" claims for losses in respect of which they had received compensation from their Governments. A note was made of this fact in the relevant category "D" claim files and account will be taken of the compensation recommended when these claims are reviewed by the "D" Panel.

9. On 27 February 1998, the Panel issued procedural orders to nine Claimants requesting them to provide information and documents which it considered necessary properly to quantify the losses in the Claims. The relevant Claimants were requested to submit their responses to the procedural orders by 27 April 1998.

10. Four of the Claimants who had been requested to submit additional information requested the Panel to grant them an extension of the time limit set by the procedural order for filing their responses. In view of the strict time limits set by the Rules for the completion of its review of the Claims, the Panel rejected these requests.

11. The procedural order of 27 February 1998 addressed to the Indian Ministry of External Affairs expressed the Panel's intention to hold an on-site inspection to verify the Claim. An inspection team composed of two secretariat legal officers, a secretariat loss adjuster and two consultant loss adjusters performed the on-site inspection in India from 27 April to 1 May 1998.

12. As a result of the information collected in the course of the on-site inspection and the Government of India's cooperation in making the necessary arrangements for the inspection at short notice, the Panel was able to review the Indian Ministry of External Affairs claim in six months notwithstanding the Panel's initial classification of the Claim as unusually large or complex.

13. In reviewing the Claims, the Panel held regular meetings conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. A consultant loss adjusting firm was retained to assist the Panel in the verification and valuation of the Claims.

II. THE CLAIMS

14. The standard claim form for category "F" claims contains the following general loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage;

depletion of natural resources and other losses. The claims in the present instalment raise seven of these twelve loss types. The next section of this report describes the Claims by loss type.

15. On a number of occasions the Panel considered it more appropriate to review a particular loss under a different classification from that under which it had been entered in the claim form. These losses are discussed below in accordance with their reclassification.

A. Contract

1. Australia

16. Australia seeks 18,581 Australian dollars (A$) in respect of reimbursements made to the Ambassador and Attaché of its Embassy in Iraq for lost personal property and foodstuffs pursuant to special regulations governing the employment relation of members of its diplomatic staff.

2. Austria

17. After the evacuation of Austrian diplomats from Kuwait, the residence of the Austrian Commercial Counsellor in Kuwait was left vacant for the period of the occupation of Kuwait. The Government of Austria asserts it had paid two years' rent in advance for these premises and seeks compensation for a total of 10,000 Kuwaiti dinars (KD) in respect of the rent paid for the eight months during which it was unable to use the residence.

3. India

18. India seeks compensation for rent paid in advance on its Chancery building and on the residences of members of its diplomatic mission in Kuwait because, following the evacuation of its diplomats, it was unable to use the premises. The Claimant seeks compensation in the amount of KD 31,110.

4. Italy

19. Pursuant to a Foreign Ministry decree, the Italian Government reimbursed 22 members of its diplomatic staff in Kuwait and Baghdad for personal property losses suffered. Compensation is sought for a total of 1,182,382,375 Italian lire in respect of such reimbursements.

5. The Republic of Korea

20. Pursuant to internal regulations, the Republic of Korea compensated 15 members of its diplomatic missions in Iraq and Kuwait for personal property and possessions they had to leave behind when they were evacuated

and which were subsequently damaged or stolen. The Claimant seeks a total of US$201,120 for the payments made to its employees.

6. The Russian Federation

21. The Russian Federation seeks compensation for payments made pursuant to a contract concluded with an Iraqi national for the guarding of its Trade Representation premises and car park in Baghdad. The contract was entered into in January 1991, when the members of the Claimant's Trade Representation left Iraq. Compensation is sought for the payments made to the guard for the months of January to March 1991 for a total of 27,000 Iraqi dinars (ID).

7. The United Kingdom

22. The United Kingdom seeks compensation for payments made by the British Council to three of its officers, two of whom were based in Kuwait and the other in Iraq, for personal property, including motor vehicles, that they lost as a result of the invasion and occupation of Kuwait. The Claimant seeks compensation for a total of 29,292 pounds sterling.

8. The United States

23. The United States seeks compensation for the loss of benefit of the lease of the residence of its Senior Commercial Officer in Kuwait. It asserts that, pursuant to the lease, one year's rent was paid in advance on 30 September 1989. As a result of the invasion and occupation of Kuwait, the Senior Commercial Officer was evacuated from Kuwait in August 1990. The Claimant seeks compensation for the loss of benefit of the lease for the months of August and September 1990 for a total of KD 1,400.

24. Pursuant to a law on reimbursement for personal property lost during emergency evacuations, the United States Commerce Department paid its Senior Commercial Officer in Kuwait the statutory maximum payable under the law in respect of his personal property losses. The United States seeks compensation for this reimbursement for a total of US$42,585.

B. Real property

1. The Czech Republic

25. The Czech Republic claims US$2,038 for costs incurred in cleaning its Embassy and staff residences in Baghdad of the debris caused by the military operations and in purchasing and fitting new windows in its Embassy. 7/

2. India

26. In the months prior to the invasion and occupation of Kuwait, an Embassy complex, consisting of the Chancery building and staff residences, was being constructed for the Indian diplomatic mission in Kuwait. India asserts that, during the occupation of Kuwait, the complex, which was nearly completed, suffered considerable damage, partly as a result of the military activity and partly because of looting. The Claimant seeks compensation for the costs incurred in repairing the Embassy complex for a total of KD 124,914.

3. The Russian Federation

27. The Russian Federation asserts that as a result of the bomb attacks on Baghdad, its Trade Representation building in Baghdad was damaged. Compensation is sought for the cost of purchasing glass and putty to replace shattered windows and the cost of fitting the new windows for a total of ID 2,512.506 and 1,415,000 Iranian rials.

C. Other tangible property

1. Austria

28. Austria asserts that, following the invasion and occupation of Kuwait, the Austrian Commercial Counsellor in Kuwait was evacuated and that his residence and the Austrian Embassy remained vacant for several months. In this period, a number of items of furniture, a motor vehicle and other tangible property at the residence and Embassy belonging to the Austrian Government were stolen or damaged. The Claimant seeks compensation for the cost of repairing or replacing such items in the amount of KD 34,818.

2. The Czech Republic

29. The Czech Republic states that the staff of the Embassy of the Czech and Slovak Federal Republic in Baghdad was evacuated in January 1991 and did not return until June 1991. During this period, the Embassy premises remained unattended and items of property were looted or damaged and foodstuffs were stolen or spoiled. The Claimant seeks compensation for the cost of repairing or replacing such items for a total of 152,694 Czechoslovak koruna.

3. India

30. India asserts that, during the period when the premises of its Chancery building and staff residences in Kuwait remained unattended following the evacuation of the members of the mission, two motor vehicles belonging to the mission were stolen. In addition, a number of household items and furniture provided by the Government for staff residences were

stolen or damaged. A total of KD 138,674 is sought for the cost of repairing or replacing such items.

4. Japan

31. Japan claims that, during the period of the occupation of Kuwait, tangible items, including three motor vehicles, supplied by the Government to the Embassy and to the residence of the Ambassador in Kuwait were lost or damaged as a result of the breakdown in civil order. The Claimant seeks compensation for a total of KD 862 and 17,453,766 Japanese yen for the cost of replacing such items.

5. Norway

32. Norway asserts that, during the period of the occupation of Kuwait, the residence of the Secretary of the Norwegian mission in Kuwait was looted. Compensation is sought for the cost of replacing the stolen items of furniture in the amount of 110,868 Norwegian krone.

6. The Russian Federation

33. The Russian Federation claims that "as a result of the multinational military action and missile and bomb shelling of Baghdad, Basra and Iraq's other cities the state organizations and firms of the former USSR sustained heavy losses to their property". According to the Claimant, the motor vehicles of the Trade Representation were damaged as a result of the shelling and the general unrest and looting that occurred during the period of military operations. The Claimant also asserts that medical instruments and medicines were stolen and foodstuffs were plundered from an out-patients' clinic. Compensation is sought for the cost of replacing or repairing the damaged and stolen items and foodstuffs for a total of US$2,215, ID 29,910 and 2,568 Russian roubles and an unquantified amount in respect of 6,000 litres of petrol stolen from the Trade Representation's storage tank.

D. Payment or relief to others

1. Australia

34. During the period following the invasion of Kuwait, the Australian missions in Kuwait and Jordan allegedly made a number of cash advances to Australian nationals who were leaving the area and were experiencing financial difficulties. Australia seeks compensation for a total of A$20,838 in respect of such cash advances.

2. Cyprus

35. Cyprus claims that it reimbursed Cyprus Airways the cost of additional insurance premiums for war risk insurance on flights to Cairo

during the period from 31 January to 2 February 1991. It seeks 17,382 Cyprus pounds as compensation for this payment.

3. India

36. India claims that three of its passport offices made cash advances to over 100,000 evacuees upon their arrival in India to assist them in the final stage of their homeward journey. The Ministry of Railways made similar advances to evacuees. India claims 42,114,140 Indian rupees in respect of such cash advances.

4. Ireland

37. Ireland asserts that in the months following the invasion and occupation of Kuwait, its Embassy in Baghdad made cash advances to some 20 individuals in financial difficulty. It seeks compensation for a total of ID 4,350 and US$20,540 in respect of these payments.

E. Evacuation costs

1. Australia

38. In Claim I, the Australian Department of Foreign Affairs and Trade seeks compensation for a total of A$255,108 in respect of costs it incurred in evacuating nationals and members of its diplomatic missions from a number of States in the Middle East.

39. The evacuation costs claimed include air fares, departure taxes on free tickets, stopover accommodation and excess baggage charges for 12 Australian nationals held hostage in Iraq and for members of the Australian missions in Iraq and Kuwait and their dependants.

40. The Claimant also seeks compensation for the cost of evacuating the dependants of members of its diplomatic missions in Tel Aviv, Damascus, Amman and Riyadh. Many of these individuals were not repatriated to Australia but, instead, were sent to designated "safehavens" in Cyprus, Italy and the United Kingdom where they spent prolonged periods of time. In addition to travel costs, the Claimant seeks compensation for accommodation in the safehavens and food allowances and per diem payments made to the evacuees during this period. Compensation is also sought for school fees paid for the evacuated daughter of one of the Claimant's diplomats stationed in Tel Aviv during her stay in Italy.

41. The Australian Embassy in Amman allegedly incurred costs of 4,551 Australian dollars in connection with the evacuation operations for the purchase of food, medical supplies, vehicle rental and excess baggage charges. The Claimant seeks compensation for such costs.

42. Claim II seeks compensation in the amount of 16,688 deutsche mark for the cost of overnight accommodation in Frankfurt and airfares from Frankfurt to their home cities in Australia for three Australian hostages evacuated from Baghdad to Germany by a third State.

2. Cyprus

43. Cyprus seeks compensation for additional hull and all liability war risks insurance for three special charter flights operated to evacuate Cypriots from Kuwait and Iraq and for two scheduled flights from Cyprus to Cairo in the week beginning 16 January 1991. Compensation is sought for a total of 100,968 Cyprus pounds.

3. The Czech Republic

44. The Czech Republic seeks compensation for costs incurred in the overland evacuation of the members of its diplomatic mission in Baghdad and in their return journey in June 1991. Such costs include petrol, motor way fares, food and accommodation for a total of US$3,740.

4. India

45. India asserts that at the time of the invasion of Kuwait over 100,000 Indian nationals were residing in Kuwait and some 8,000 in Iraq. During the period from August to November 1990, a complex evacuation operation was organized to repatriate these individuals by air and by ship. At the request of the Indian Ministry of External Affairs, Air India operated 546 flights, principally to Amman, but also to Dubai, Dahran, Jeddah and Riyadh, and repatriated over 114,000 people. As Air India did not have the capacity to operate all the flights with its own aircraft, it chartered aeroplanes from Indian Airlines and Aeroflot. The Indian Air Force was also involved in the evacuation and operated 24 flights to Amman, Baghdad, Basra and Dubai. In addition to setting up the airlift, the Indian Ministry of External Affairs also requested the Shipping Corporation of India to participate in the evacuation operations.

46. According to the Claimant, the greatest number of Indians fled to Jordan, from where they were flown to India after spending varying periods of time in temporary accommodation. A number of evacuees were also sent to Basra, from where they travelled, either on the Indian Air Force aeroplanes or by ship, to Dubai, from where they were then flown to India. Some 2,200 people were repatriated by ship. When the evacuees arrived in India, principally in Bombay, New Delhi and Cochin, those travelling onwards by train were provided with free rail passes to their final destination by the Ministry of Railways. The Claimant seeks compensation for the cost of the Air India, Indian Air Force and Shipping Corporation of India operations and for the rail passes supplied by the Ministry of Railways.

47. In addition to travel expenses, India also seeks compensation for the cost of purchasing food and other basic necessities for the evacuees and

for the cost of shipping the commodities to Jordan, where most of the evacuees were waiting to be repatriated. Compensation is also sought for expenses incurred by the Indian Embassies and General Consulates in Amman, Baghdad, Basra, Riyadh, Ankara, Abu Dhabi, Tehran, Jedda and Bahrain in organizing and carrying out the evacuation.

48. India also seeks compensation for the costs of an Indian Red Cross Society mission to Iraq and Kuwait to provide assistance to the Indian nationals awaiting repatriation. The costs relate to the purchase and transport of medicines, the Red Cross team's travel costs and other expenses it incurred on the relief mission.

49. India claims a total of US$129,874,609 in respect of evacuation costs.

5. Ireland

50. Ireland asserts that its Embassies in Amman, Baghdad, Bern, Bonn, London, Riyadh and Rome incurred expenses for a total of 73,002 Irish pounds in respect of evacuation costs. Such costs include the purchase of airline tickets to Ireland, stopover accommodation for evacuees, food, car rental, taxi fares and cash advances made to nationals in financial difficulties.

6. Japan

51. Japan asserts that it chartered aircraft to operate evacuation flights in September and December 1990. Japanese nationals in Iraq were flown to Amman or Bangkok and from there on to Japan. The Claimant seeks compensation for the cost of chartering the flights in the amount of US$360,000 and 125,000,000 Japanese yen.

7. The Republic of Korea

52. The Republic of Korea seeks compensation for a total of US$1,232,749 in respect of evacuation costs. It asserts that, following the invasion of Kuwait, Korean Air operated five flights to evacuate Korean nationals from Kuwait and Iraq. Most of the evacuees paid for the flights themselves but the Korean Government paid the fares of those passengers who could not afford the tickets. Furthermore, in January 1991, after the commencement of military operations, the Government of the Republic of Korea organized four special flights to evacuate Korean nationals. On this occasion too, the passengers paid their own fares but, because of additional war liability insurance charged, there was a shortfall between the cost of chartering the aircraft and the collected fares which was borne by the Claimant. As the evacuation flights were operated from Amman, the Claimant also incurred expenses in providing accommodation in Jordan for the evacuees. Furthermore, one of the evacuees gave birth while in Jordan and compensation is sought for the hospital costs.

53. The Claimant also seeks compensation for airfares and stopover accommodation for members of its diplomatic missions in Kuwait and Iraq; for the cost of an official visit to Amman by one of its Foreign Ministry officials from Seoul; and for one month's hotel accommodation in Amman for a member of its mission in Baghdad who had been on leave at the time of the invasion and who had been unable to return to Iraq.

8. Norway

54. Norway claims that the Norwegian Embassy in Kuwait was forced to close in September 1990 and six Embassy employees and their dependants had to be evacuated. Similarly, the Embassies in Riyhad, Damascus and Islamabad were also closed and the Embassy staff and their families evacuated. In addition, the Norwegian Government incurred costs in evacuating some 20 Norwegian nationals from the area. Some of the individuals were flown directly to Norway while others travelled overland to Jedda, from where they were repatriated. In addition to airfares, overland travel costs and handling charges incurred in Riyhad on a military flight involved in the evacuation operations, the Claimant seeks compensation for hotel expenses, food and per diem payments made to members of its diplomatic staff while on the evacuation journey. A total of 659,448 Norweigan krone is claimed in respect of evacuation costs.

9. Poland

55. In its claim, the Polish Ministry of Foreign Economic Relations asserts that in September 1990 it concluded an agreement with the Polish airline LOT to evacuate Polish nationals in Iraq and Kuwait via Amman. Pursuant to this agreement, in the period August 1990 to March 1991, LOT operated 32 flights and evacuated 2,476 people. The Claimant seeks compensation for the cost of the flights for a total of 17,337,079,800 zlotys.

56. The Polish Ministry of Foreign Affairs also concluded an agreement with LOT for the operation of four evacuation flights from Amman to evacuate Polish nationals from Iraq and Kuwait. Compensation is sought for the cost of the four flights amounting to 1,687,104,000 zlotys.

10. The Russian Federation

57. The Russian Federation asserts that at the time of the invasion and occupation of Kuwait there were 7,263 Soviet citizens living in Iraq and 880 in Kuwait. Virtually all of these individuals had been evacuated by the end of January 1991. The individuals travelled by road to Baghdad and Amman and were flown from there to the Soviet Union on flights chartered from Aeroflot and Iraqi Airways. The Claimant seeks compensation for the cost of chartering the aircraft from Iraqi Airlines and the estimated standard one way economy fare from Amman, Baghdad or Teheran to Moscow for 8,130 people. The total amount claimed is ID 228,564 in respect of the

Iraqi Airways charter and US$7,101,161 in respect of the Aeroflot operations.

58. In addition, the Russian Federation seeks compensation for the cost of the 2,700 litres of petrol used to transport the evacuees by road from Baghdad to Tehran. It does not quantify the amount of compensation sought in respect of this item.

11. Sweden

59. Sweden seeks compensation in the amount of 2,879,132 Swedish krona in respect of costs incurred in evacuating its nationals from Iraq and Kuwait. Some of the evacuees flew directly from Baghdad whilst others travelled overland to Jordan or Turkey, from where they were flown to Sweden. The amount claimed is made up of the cost of chartering flights, the cost of individual air tickets, airport taxes, excess baggage charges, the cost of hiring buses for the overland portion of the journey and the cost of food and accommodation.

12. The United States

60. The United States seeks compensation for the per diem payments it made to its Senior Commercial Officer in Kuwait and his son during the period they were kept hostage in Iraq; the subsistence allowance paid to the officer's wife and daughters, who were on holiday in Australia at the time of the invasion of Kuwait, for the period from August 1990 to January 1991; the officer's airfare to Australia; the officer and his family's airfares from Australia to the United States and stopover accommodation in January 1991; travel allowances paid to the officer in respect of his return trip; and accommodation and food allowances paid to the officer in Washington D.C. in January and February 1991 pending his new posting. A total of US$42,600 is claimed in respect of these evacuation costs.

F. Public service expenditure

1. Australia

61. Australia seeks compensation for a total of A$403,302 in respect of public service expenditures. This amount includes the salaries paid to the Department of Foreign Affairs officials staffing the Iraq/Kuwait special task force in Canberra, which "played a central role in the management of [the] Department's functions relating to the invasion and subsequent armed conflict" and the salary of one senior officer "responsible for the administrative work associated with the Iraq/Kuwait compensation process".

62. The Claimant also seeks compensation for a number of other minor public service expenditures such as travel costs for diplomats on official missions; the costs of relocating members of diplomatic missions; and overtime payments made to staff in Baghdad, Amman and Damascus.

2. India

63. India seeks compensation for the cost of establishing and maintaining the Special Kuwait Cell in its Ministry of External Affairs; for the cost of official travel, domestic and abroad, by the members of the Cell in connection with compensation work; and for the expenses incurred by the Cell in printing, copying and distributing claim forms, processing claims and sending them to the Commission.

64. In addition, compensation is sought in respect of costs incurred by the four Indian banks "designated for the task of disbursement of UNCC awards of compensation". These expenses include publicity, computerisation, manpower, postage, telecommunications, travel and miscellaneous expenses.

65. India also seeks compensation for the costs of an official mission to Amman and Dubai carried out by members of its Ministry of Interior in connection with the evacuation operations.

66. A total of 220,895,330 Indian rupees is sought in respect of public service expenditure.

3. Ireland

67. Ireland seeks compensation for a total of 252,843 Irish pounds in respect of public service expenditure. This figure includes the cost of staffing the Gulf Crisis Unit at the Department of Foreign Affairs in Dublin whose function was, inter alia, "to collate information about the general political and military situation in so far as it affected, or seemed likely to affect, the security and welfare of about 400 Irish citizens in Iraq and Kuwait ... and to liaise with the[ir] families in Ireland".

68. Compensation is also sought for salaries paid to additional staff hired by the Irish Embassies and Consulates in Baghdad, Riyadh, Amman and Nicosia; travel costs for members of the aforementioned missions; the cost of installing telephone lines for the Relatives Support Group at the Foreign Ministry; the cost of the telephone calls made from the Ministry and the cost of purchasing and transporting gas masks and chemical warfare safety equipment to the Irish Embassies in Baghdad and Amman and the cost of eight VHF portable radio sets purchased to facilitate communication between the Irish diplomatic missions in the Middle East.

69. Shortly after the invasion of Kuwait, when about 400 Irish citizens were prevented from leaving Iraq and Kuwait, the Government of Ireland decided that it would bear the costs of one ten minute telephone call per week from each person to his/her family. The Claimant seeks compensation for the cost of the telephone calls.

4. Norway

70. Norway seeks compensation in the amount of 182,262 Norwegian krone in respect of public service expenditure. These costs include travel and accommodation expenses incurred in moving diplomatic staff from Baghdad and in strengthening the Norwegian mission in Tel Aviv; overtime paid to locally employed staff in Baghdad; various travel and accommodation expenses in Norway relating to ministerial meetings and meetings with families of Norwegian nationals held hostage in Iraq; and the prepaid fees at a Norwegian boarding school for the children of one of the diplomats in Iraq who, following their parents' repatriation, no longer attended the school.

G. Other claims

1. India

71. India asserts that the Shipping Corporation of India concluded a contract to transport a load of sulphur from Bahrain to India on one of the ships used for the evacuation operations. Loading of the sulphur commenced on 15 January 1991 but, due to the commencement of military operations, the ship was called back to India by the Shipping Corporation of India before the entire cargo had been loaded. The Claimant seeks US$180,866 in compensation, representing the difference between the amount due under the charter agreement and the amount actually received in respect of the cargo carried.

2. The Republic of Korea

72. The Republic of Korea claims that it purchased gas masks for the Korean diplomatic missions in Iraq, Saudi Arabia, Jordan, the United Arab Emirates, Qatar and Bahrain and transported the safety equipment back to the Republic of Korea after the liberation of Kuwait. It seeks compensation for a total of 43,226,000 won in respect of these costs.

3. The United States

73. The United States seeks compensation for the costs incurred in preparing its claim for submission to the Commission. The amount charged is five per cent of the value of its claim, and "includes the cost of US Government attorneys, other professionals, support and secretarial staff, as well as reproduction, telecopier, telephone, courier and similar charges". A total of US$4,497 is sought in respect of claim preparation costs.

74. The United States also claims interest on the compensation awarded, running from the date of the loss to the date of the award.

III. LEGAL FRAMEWORK

75. In the First Report the Panel discussed the legal framework within which the claims of Governments and international organizations would be decided by the Commission. 8/ The discussion covered the law applicable to the category "F" claims, the procedural and evidentiary requirements imposed on the Claimants and the Panel's role in the proceedings. The Panel's findings concerning the applicable law, procedural rules and evidentiary requirements set out therein are also applicable to the claims in the present instalment.

76. In applying the aforementioned pleading and evidentiary requirements, the Panel found that within certain claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other appropriate evidence sufficient to demonstrate the circumstances or amount of the claimed losses in accordance with the Rules. For instance, in one claim the only evidence adduced in support of one item of loss was an explanatory statement. The Panel determined that this was insufficient of itself to discharge the burden of proof imposed on category "F" Claimants by the Rules. In this and other such cases, the Panel finds that compensation should not be awarded for the portions of the Claims in question.

IV. COMPENSABILITY OF THE CLAIMS

A. Contract

1. Prepaid rent on Embassy premises and staff residences

77. India seeks compensation for rent paid in advance for its Chancery building in Kuwait in respect of the months of the occupation of Kuwait when the members of its mission in Kuwait had been evacuated.

78. In the First Report, the Panel reviewed a claim which sought compensation for rent that a claimant had prepaid in respect of its Embassy in Kuwait which had been left vacant during the period of the occupation of Kuwait. The Panel held that "the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation" and that "[i]n any event ... the Claimant would have incurred the rental expenses regardless of whether Iraq invaded and occupied Kuwait." 9/ This finding was adopted by the Panel in the Second Report. 10/

79. In accordance with these findings, the Panel determines that the claim for rent paid in advance on its Chancery building in Kuwait is not compensable.

80. Austria, India and the United States seek compensation for the loss of benefit of the leases of staff residences in Kuwait during the period of

the occupation of Kuwait, in respect of which rent had been paid prior to the invasion.

81. In the Panel's view, rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings. This is due to the close link between the two types of premises: when diplomatic relations are interrupted, it is not only the premises of the diplomatic mission offices that are vacated but, inevitably, also the staff residences. The nature of diplomatic relations between States is such that a State opening a diplomatic mission and renting Embassy premises and staff residences can be considered to have assumed an inherent risk that it will lose rent paid in advance if diplomatic relations with the host State are interrupted and the mission is withdrawn. The cost of renting residences for the members of diplomatic missions can be considered an "ancillary cost" of running the mission. Furthermore, the rent was an expense that would have been incurred regardless of the invasion and occupation of Kuwait. Thus, the loss suffered was not the prepaid rent but the use of the premises. For the same reasons that the Panel found that the economic value of the loss of use of the Embassy premises was not quantifiable, because of the nature of the activities carried out by diplomatic missions, the loss in the present Claims is not amenable to monetary evaluation.

82. Accordingly, the Panel cannot recommend compensation for the portions of the claims of the Governments of Austria, India and the United States relating to prepaid rent on staff residences in Kuwait.

2. Reimbursement to diplomatic staff for loss of personal property

83. Australia, Italy, the Republic of Korea, and the United States claim that, pursuant to special national regulations, they reimbursed members of their diplomatic missions in Iraq and/or Kuwait for personal property losses. The United Kingdom asserts that it made similar payments to three British Council officials but does not explain the basis upon which the payments were made. The Claimants seek compensation for the reimbursement payments.

84. One of the Claimants in the first instalment of category "F" claims sought compensation for payments it had made to its diplomats whose property was lost or damaged in Kuwait or Iraq pursuant to the regulations applicable to the employment contract in force between it and the members of its diplomatic service. The Panel held that "reimbursements for the loss of tangible property made by the Claimants pursuant to their contractual obligations should be compensated to the extent they are adequately supported by documentary and other appropriate evidence". 11/

85. To the extent that the reimbursement claims in the present instalment were made pursuant to special decrees or laws and regulations governing the

employment contracts of members of the diplomatic service, they are compensable on the same basis as the claims in the First Report.

86. The United Kingdom does not explain the basis on which it reimbursed the British Council officers. In the absence of such information, the Panel is unable to determine whether the Claimant was under a legal obligation to make the payments, or whether the losses would otherwise be compensable. The Panel considers that the Claimant has not met the pleading standards laid down in the Rules and, therefore, cannot recommend that compensation be awarded in respect of this Claim.

3. Security contract

87. The Russian Federation claims that, at the time of the departure of the members of its diplomatic mission from Baghdad in 1991, a contract was concluded with an Iraqi national to guard the premises and car park of its Trade Representation in Baghdad. Under the contract the guard assumed strict liability for any ensuing loss or damage.

88. The Panel finds that compensation can, in principle, be awarded for reasonable measures taken to avoid or limit damage to property. However, in view of the situation in Iraq in January 1991, the conclusion of a private arrangement of the kind described in the Claim cannot be considered a reasonable measure of protection. The fact that the Claimant is seeking compensation for property looted from its Trade Representation premises highlights the ineffectiveness of this arrangement. Accordingly, the Panel is unable to recommend compensation in respect of payments made to the guard pursuant to the contract.

B. Real property

89. The Czech Republic and the Russian Federation claim that their diplomatic missions in Iraq suffered damage, allegedly as a result of military action and civil unrest during the period of the occupation of Kuwait. India makes a claim for similar losses in Kuwait. These Claimants seek compensation for the costs incurred in repairing and cleaning their missions.

90. In the First Report the Panel addressed the issue of the compensability of repairs to Embassy premises in Kuwait and Iraq. The Panel noted that paragraph 36 of Governing Council decision 7 provided that compensatory payments were available for "loss of or damage to property of a Government" and that the Governing Council had indicated that property lost either because of the "breakdown of civil order in Kuwait or Iraq [during the occupation of Kuwait]" 12/ or "because it had been left unguarded ... due to the situation in Iraq and Kuwait" 13/ was compensable. The Panel concluded that claims for repair costs could be considered as resulting directly from the invasion and occupation of Kuwait. Consequently, the Panel found such losses to be compensable. 14/

91. Furthermore, the Panel notes that, according to paragraph 34 of Governing Council decision 7, compensation will be available in respect of "any loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". 15/

92. For the aforementioned reasons the Panel finds that the repair costs claimed are compensable to the extent to which they are reasonable and adequately supported by documentary or other appropriate evidence.

c/ Other tangible property

93. Austria, the Czech Republic, India, Japan, Norway and the Russian Federation assert that, during the period of the occupation of Kuwait, when their Embassies and staff residences in Iraq and Kuwait were unattended following the evacuation of the members of the missions, property left therein was stolen and/or damaged and foodstuffs spoiled. The Claimants seek compensation for the cost of replacing the items in question.

94. In the First Report the Panel considered that, for the reasons given in respect of claims for damage to real property, claims for loss or damage to other tangible property located in Iraq and Kuwait should also be compensable to the extent that the loss was adequately supported by documentary or other appropriate evidence. 16/ The same reasoning applies to the Claims in the present instalment, including those for spoiled foodstuffs.

D. Payment or relief to others

1. Cash advances

95. Australia and Ireland assert that, in the months following the invasion of Kuwait, their diplomatic missions in Kuwait, Amman and Baghdad made cash advances to a number of their nationals in financial difficulty to assist them during their evacuation journey. Similarly, India claims that three of its passport offices and the Ministry of Railways made cash advances to evacuees upon their arrival in India to assist them in the final stage of their homeward journey.

96. In the First Report the Panel found that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait ... are directly related to Iraq's invasion and occupation of Kuwait". 17/

97. The Panel finds that the cash advances were made to assist individuals in their evacuation journey. The Panel considers cash advances to be "temporary and extraordinary expenses" and, as such, compensable.

2. Other payments

98. Cyprus claims that it reimbursed Cyprus Airways the cost of additional insurance premiums for war risk insurance on flights from Cyprus to Cairo during the period from 31 January to 2 February 1991. The Claimant has not provided any explanation of why it made this payment. The Panel, therefore, considers that in respect of this portion of its claim the Claimant has failed to meet the pleading standard imposed on claimants and the costs claimed are, therefore, not compensable.

E. Evacuation costs

99. Several Claimants seek compensation for costs incurred in evacuating their nationals and other individuals from a number of States in the Middle East following Iraq's invasion of Kuwait.

100. Paragraph 36 of Governing Council decision 7 provides that compensation is available for "losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait". In the First Report, the Panel determined that, although the Governing Council decision did not expressly refer to costs incurred by Governments in the evacuation of individuals of nationalities other than their own, such costs would be compensable on the same basis as those incurred by Governments in the evacuation of their own nationals. 18/ The Panel also determined that, although Governing Council decision 7 only referred to costs of evacuating individuals from Iraq and Kuwait, compensation would also be awarded in respect of costs incurred in evacuating individuals from Israel and Saudi Arabia given that "military operations or [the] threat of military action" had been directed against these two States. 19/

101. In the Panel's view, compensation under this loss type should be awarded in respect of costs incurred for transport, accommodation, food and urgent medical treatment. 20/ Other items of expenditure incurred during the evacuation journey cannot be considered a necessity but are ancillary costs, such as costs of telephone calls, room service and bar and laundry bills. The Panel finds that such costs are not compensable.

102. A number of Claimants seek compensation for excess baggage charges or for the cost of transporting evacuees' baggage. In view of the fact that compensation would have been available in respect of loss of personal property had the baggage been left behind, the Panel considers such costs to be reasonable in the circumstances and, as such, compensable.

103. Australia seeks compensation for internal flights and India claims compensation for railway passes provided to evacuees upon their arrival in India to take them to their place of residence. In the First Report the concept of evacuation was interpreted in a broad manner, synonymously with repatriation. In the Panel's view, although it is arguable that purely internal travel costs should fall outside the scope of evacuation, such a

decision could operate arbitrarily in practice, discriminating on the basis of whether a direct connection existed to the evacuees' place of residence. Furthermore, in a situation of mass evacuation as occurred in India, if onward internal transportation had not been provided immediately it would have been necessary for the Government to set up temporary shelters and facilities for the tens of thousands of evacuees arriving in Bombay and New Delhi. This would have given rise to a larger claim than that for providing the railway passes. For these reasons, the Panel considers that internal evacuation costs are compensable, provided there was not a significant interruption in the evacuation journey so as to prevent it from being considered an ongoing journey.

104. Australia asserts that, rather than repatriating some of the families of the members of its diplomatic missions in various States in the Middle East, it sent them to "designated safehavens" in Europe where they spent prolonged periods of time awaiting the termination of military operations. In addition to the cost of travel to the safehavens, the Claimant seeks compensation for accommodation costs and food and living allowances paid to the dependants for the period of their stay in the safehavens. The Panel considers that the accommodation costs and allowances were paid as a result of the Claimant's independent and voluntary decision not to repatriate the dependants and as such cannot be considered evacuation expenses incurred as a direct result of Iraq's invasion and occupation of Kuwait. Therefore, the Panel only recommends compensation for the travel portion of the Claim.

105. Similarly, the United States seeks compensation for per diem payments made to its Senior Commercial Officer and his son for the period they were held hostage in Iraq; subsistence allowances paid to the officer's wife and daughters in Australia until January 1991; the family's travel costs from Australia to the United States; and travel, food and accommodation allowances paid to the officer in Washington D.C. in January and February 1991.

106. The Panel considers that the subsistence allowances paid to the Senior Commercial Officer and his son in respect of the period they were kept hostage are payments for "temporary and extraordinary" expenses that resulted from the individuals' incapacity to leave Iraq and, as such, are compensable. Similarly, the Panel considers that the cost of evacuating the Senior Commercial Officer is also a compensable cost. However, rather than returning to the United States, the officer decided to join his family in Australia. The Panel considers that his travel costs to Australia are compensable up to the cost of a flight from Baghdad to Washington, his final destination in the United States. The Panel is of the view, however, that no compensation should be awarded for the subsistence payments made to the officer's family in Australia or their travel costs back to the United States. Individuals in Australia were not in the geographical area in respect of which compensation for evacuation costs is awarded and, therefore, their travel and subsistence costs cannot be considered compensable evacuation costs. Similarly, the allowances paid in respect of

their stay in Australia and, upon their return, in the United States were not intended to cover "temporary and extraordinary living expenses that result[ed] from individuals' departure from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991" 21/ but, rather, were "discretionary payments for ongoing ordinary living expenses that are incurred after a person has left the region" 22/ and, as such, are not compensable.

107. Cyprus claims compensation for increased insurance costs for three special flights operated by Cyprus Airways to evacuate Cypriot nationals from Iraq and Kuwait on 15 January 1991 and for two scheduled flights to Cairo in the week of 16 January 1991. The charter agreement between the Claimant and Cyprus Airways in respect of the three evacuation flights provides that the Claimant must reimburse Cyprus Airways "all costs and expenses involved or arising out of" the operation of the flights. It appears that, because of the start of military operations, Cyprus Airways' insurers increased the premium on the flights. The Panel believes this increase constitutes a "cost and expense" within the meaning of the charter agreement which the Claimant was contractually obliged to bear. It is, therefore, an unavoidable expense relating to the three special evacuation flights.

108. On the other hand, no explanation was provided by the Claimant of why it had to bear the increased insurance premium on the scheduled flights from Cyprus to Cairo. These flights were not part of the evacuation operations. In the absence of such an explanation, the Panel considers that the Claimant has failed to meet the pleading requirements in respect of this portion of the Claim and, accordingly, only recommends compensation in respect of the increased insurance premium relating to the three evacuation flights.

109. A number of Claimants seek compensation for costs incurred after the liberation of Kuwait in bringing the members of their diplomatic missions, their dependants and other individuals back to the States in the Middle East from where they had been evacuated.

110. The Panel notes that the language of paragraph 34(d) of Governing Council decision 7 only refers to loss suffered as a result of "departure of persons from or their inability to leave Iraq or Kuwait during [the period from 2 August 1990 to 2 March 1991]". Similarly, paragraph 36 of that decision only refers to "losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait".

111. The Panel finds that costs incurred in bringing individuals back to the States from where they had been evacuated cannot be considered an evacuation cost and, therefore, are not compensable.

112. The Polish Ministry of Foreign Economic Relations seeks compensation for the costs incurred in chartering flights to evacuate over two thousand

Polish nationals from Iraq and Kuwait. The Claimant's response to the procedural order of 27 February showed that a number of companies employing Polish nationals in Iraq and Kuwait have reimbursed the Claimant for the cost of evacuating their employees. In view of this, the Panel considers that only the balance of the cost of chartering the flights, once the payments received from employers and other sources are deducted, is compensable.

113. The Russian Federation has not submitted any evidence in support of its claim for evacuation costs. Accordingly, the Panel is unable to recommend any compensation in respect of this portion of the Russian Federation's claim. The Panel notes, however, that the same evacuation operations form the basis of a claim submitted in category "E" through the Government of the Russian Federation.

F. Public service expenditure

114. Australia asserts that it set up a Special Task Force at its Department of Foreign Affairs in Canberra which coordinated the department's activities in relation to the Kuwait crisis. It seeks compensation for the salaries paid to department officers assigned to the Task Force. Similarly, Ireland seeks compensation for the salaries paid to the Department of Foreign Affairs officers assigned to the Gulf Crisis Unit in Dublin.

115. The Panel notes that both claims seek compensation for salaries paid to individuals who were members of the Claimants' permanent staff at the time of the invasion of Kuwait. Their salaries are, therefore, an expense which would have been incurred regardless of the invasion. What the Claimants actually lost was the benefit of the services of the officers in their ordinary posts. However, the nature of the work carried out by members of Foreign Ministries is such that this lost benefit cannot be valued in monetary terms. Accordingly, the Panel finds that these portions of the Australian and Irish claims are not compensable.

116. Australia also seeks compensation for the salary paid to the Department of External Affairs officer responsible for the administrative work associated with the compensation process. Similarly, India seeks compensation for the costs of establishing and running the Special Kuwait Cell of its Ministry of Foreign Affairs, the unit entrusted with processing claims, and the costs incurred by the four banks designated by the Government to disburse awards made by the Commission.

117. The Panel notes that paragraph I.1 of Governing Council decision 18 provides that

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of the Governments. In the

case of awards payable to claimants in categories "A", "B" and "C", the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories "D", "E" and "F", the fees should not exceed 3 per cent." 23/

118. The Panel understands that it was intended that this fee be the sole compensation to which Governments are entitled in respect of their claim processing expenditures. In the Panel's view, the costs claimed by Australia and India constitute claim processing expenses and, as such, are not compensable.

119. Ireland claims that it agreed to pay a weekly ten minute telephone call to Ireland for Irish nationals who had been prevented from leaving Kuwait following the invasion and occupation of Kuwait. In view of the fact that the individuals were detained in Kuwait against their will in precarious and uncertain conditions, the Panel considers that the Claimant's decision to facilitate communication with the outside world was reasonable in the circumstances and the resulting costs should, accordingly, be compensable. The Panel finds, however, that compensation should only be recommended for a reasonable portion of these costs.

120. Australia, Ireland, India and Norway also claim compensation for public service expenditures of a general nature, such as costs of official missions, costs of transfer of diplomats, and salaries for additional staff and overtime payments made to members of their diplomatic missions in the Middle East.

121. The Panel considers that these expenses were incurred by States in the exercise of protective functions in times of emergency. As these tasks are an integral part of the functions of diplomatic missions they cannot, in the Panel's view, be considered to be of the extraordinary nature that would warrant their compensability.

122. Ireland seeks compensation for the cost of purchasing VHF radio equipment for its Embassies in the Middle East. The Panel considers that safety measures taken by Claimants for the protection of individuals and property are a compensable expense, provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed. The Panel does not consider VHF radios to constitute a reasonable or effective measure of protection in the prevailing circumstances. The costs claimed, therefore, are not compensable.

123. Norway also seeks compensation for boarding school fees paid in advance for the children of one of its diplomats in Iraq. The children left the school after their parents' repatriation following the closure of the mission. The Panel does not consider this to be a compensable item because the fact that the children did not benefit from the school was due to their parents' independent decision to withdraw them from the school.

G. Other claims

124. India seeks compensation for the shortfall in revenue suffered by the Shipping Corporation of India in respect of a charter contract it concluded for the carriage of a load of sulphur from Bahrain to India. The Shipping Corporation of India headquarters recalled the ship from its load point in Bahrain on 15 January 1991 due to the commencement of military operations, before the entirety of the cargo had been loaded. Payment was received only in respect of the portion of the sulphur actually transported.

125. The Panel notes that the Indian Ministry of External Affairs has not reimbursed the Shipping Corporation of India, an independent legal entity, for this loss of earnings. The Claimant has not, therefore, suffered any loss. Accordingly, in the absence of any assignment of the Shipping Corporation of India's claim, the Panel considers that this portion of the claim of the Government of India is not compensable.

V. OTHER ISSUES

A. Currency exchange rates

126. As in the first instalment, some of the Claimants in the present instalment have incurred losses or stated their claims in currencies other than United States dollars. As the Commission issues awards in United States dollars, the Panel is required to determine the appropriate rate of exchange. In the First Report the Panel determined that adopting the currency exchange rate as at the date of loss was the most appropriate method of calculating the applicable exchange rate. The losses had occurred during the period of Iraq's occupation of Kuwait, namely from 2 August 1990 to 2 March 1991. The Panel adopted 16 November 1990, the midpoint of the occupation period, as the date of loss.

127. The Panel had also noted that special circumstances existed in relation to the exchange rate to be adopted for losses suffered in Kuwaiti dinars. As the invasion and occupation of Kuwait had caused a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, the Panel adopted the exchange rate for the Kuwaiti dinar that prevailed immediately prior to the invasion. 24/

128. The Panel finds that the majority of losses for which compensation is sought in the present instalment also occurred throughout the period of the occupation of Kuwait but, in general, it was not possible to identify the precise date of their occurrence. Therefore, in this instance, the Panel also considers 16 November 1990, the midpoint of the occupation, to be the most appropriate date for determining the applicable exchange rate. For the reasons given above, 1 August 1990 is the date adopted for determining the exchange rate for Kuwaiti dinars.

129. The rates of exchange used as at 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for other currencies are the average monthly rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991. 25/

B. Interest

130. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "the methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards". 26/ Thus, at this stage, the Panel need only set the date from which interest will run. For the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates, the Panel considers that the same date should be used for calculating interest. Accordingly, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

C. Claims preparation costs

131. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intended to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs at this stage.

VI. QUANTIFICATION OF THE CLAIMS

132. As discussed above, the Panel considers that certain loss elements within the Claims should not be compensated because they fail to meet either the Commission's pleading and evidentiary standards or the directness requirements as formulated in Security Council resolution 687 (1991).

133. In many of the Claims, the documentary or other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a claimant given the circumstances prevailing at the time of the loss, particularly in Iraq and Kuwait. 27/

134. With respect to the loss elements that the Panel considers to be compensable, the Panel verified that the losses had, in fact, occurred and then quantified such losses. The Panel was assisted in this task by expert loss adjusting consultants and the secretariat. Initially, the Panel

undertook a careful examination of the statements of claim and evidence filed by the Claimants. As explained in paragraph 9, supra, the Panel then required certain Claimants to answer questions and to submit additional documents that it deemed necessary to quantify the amount of the alleged losses. In addition to verifying that the claimed losses had, in fact, occurred, the Panel also considered the reasonableness of the Claimants' conduct and of the amounts claimed. For example, in relation to claims for evacuation costs, the Panel only recommended compensation for one-way economy fares.

135. In quantifying the losses, the Panel weighed the amount and type of evidence submitted in support of the claimed losses and received advice from the loss adjusters on the nature and quantity of evidence that a claimant would normally be expected to submit in comparable emergency situations. In reaching the figures of the recommended awards, the Panel adopted general principles of loss adjusting such as reasonableness of costs incurred, depreciation and betterment. For example, in relation to claims for lost or damaged property where the amount claimed was the replacement value, reductions were made to take into account the age of the property in question at the time the loss or damage occurred. In respect of claims for reimbursements for lost or damaged property, deductions were made if sufficient evidence supporting the underlying losses had not been provided, or to reflect depreciation or part use of the lost property.

136. During the on-site inspection in India, primary material supporting each item of expenditure for which compensation was sought in the Indian Ministry of External Affairs claim was reviewed. Individuals with first hand knowledge of the evacuation operations and of the documents supporting the Claim were interviewed at the Ministry and at the Air India and Shipping Corporation of India headquarters.

137. In order to verify and value the portion of the Claim relating to evacuation costs, senior financial officers from Air India and the Shipping Corporation of India were interviewed. Invoices, landing records, relevant correspondence and profit and loss accounts and budgets for the relevant years were examined in order to verify the costs and expenses underlying the charter prices charged to the Government of India.

138. Documents were also inspected at the office of the Chief Controller of Accounts of the Ministry of External Affairs, who held the invoices and payment authorizations underlying the expenditures incurred by the Indian Embassies and Consulates in the Middle East.

139. On the basis of the information acquired and verified in the course of the on-site inspection, the amounts claimed by the Indian Ministry of External Affairs were allowed to the extent they were supported by appropriate documentary or other evidence and accounting figures.

140. On the basis of its review and evaluation of the Claims, the Panel makes the following determinations concerning the quantification of the Claims, summarized by general loss type in the table below. The amounts are stated in United States dollars.

	QUANTIFICATION E LOSS ELEMENT							
Claimant	Contract	Real property	Tangible property	Payment or relief to others	Evacuation costs	Public service expenditures	Other	Total amount recommended
Australia, Claim I	7,833				66,695	0		74,128
Australia, Claim II					10,506			10,506
Austria	0		40,074					40,074
Cyprus				0	60,581			60,581
The Czech Republic		1,392	1,826		1,515			4,733
India	0	251,503	266,910	2,320,338	89,782,646	0	0	92,621,397
Ireland					140,155	74,956		215,111
Italy	379,955							379,955
Japan			70,501		1,297,383			1,367,884
Korea	0				1,226,772		0	1,226,772
Norway			15,094		4,175	3,880		23,149
Poland: Ministry of Foreign Economic Relations					719,723			719,723
Poland: Ministry of Foreign Affairs					177,590			177,590
The Russian Federation	0	8,079	51,880		0			59,959
Sweden					445,802			445,802
United Kingdom	0							0
United States	21,293				16,710			38,003
Total								97,665,367

VII. RECOMMENDATIONS

141. On the basis of the foregoing, the Panel recommends that the following amounts be awarded as compensation for losses incurred by the Claimants as a direct result of Iraq's invasion and occupation of Kuwait:

(a) Australia for its Department of Foreign Affairs and Trade: US$74,128 for Claim I and US$10,506 for Claim II;

(b) The Republic of Austria for its Foreign Trade Department: US$40,074;

(c) The Republic of Cyprus for its Ministry of Communications and Works: US$60,581;

(d) The Czech Republic for its Ministry of Foreign Affairs: US$4,733;

(e) The Republic of India for its Ministry of External Affairs: US$92,621,397;

(f) Ireland for its Department of Foreign Affairs: US$215,111;

(g) The Italian Republic for its Ministry of Foreign Affairs: US$579,955;

(h) Japan for its Ministry of Foreign Affairs: US$1,367,884;

(i) The Republic of Korea for its Ministry of Foreign Affairs: US$1,226,772;

(j) The Kingdom of Norway for its Ministry of Foreign Affairs: US$23,149;

(k) The Republic of Poland for its Ministry of Foreign Economic Relations, Office of Budget and Administration: US$719,723 and for its Ministry of Foreign Affairs, Administration and Finance Department: US$177,590;

(l) The Russian Federation for its Ministry of Foreign Economic Relations: US$59,959;

(m) The Kingdom of Sweden for its Ministry for Foreign Affairs: US$445,802;

(n) The United Kingdom of Great Britain and Northern Ireland for its British Council: nil; and

(o) The United States of America for its Department of Commerce: US$38,003.

Geneva, 24 July 1998

(Signed) Bjørn Haug
Chairman

(Signed) Georges Abi-Saab
Commissioner

(Signed) Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ The amounts claimed are stated in United States dollars although many claims were originally expressed in other currencies. In respect of claims filed in other denominations, the United States dollar amounts have been calculated by using the August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics.

3/ The Czech Republic's claim includes a statement explaining that the Czech and Slovak Federal Republic ceased to exist on 31 December 1992 and was succeeded by the Czech Republic and the Slovak Republics on 1 January 1993. On the basis of agreements concluded at the time of the separation, the Czechoslovak Embassy and Embassy residence in Baghdad became the property of the Czech Republic. Accordingly, although it had been the Federal Republic that had suffered the losses in respect of which compensation is claimed, the Czech Republic is the proper and sole claimant in respect of these losses.

4/ Category "C" claims are individual claims for damages up to US$100,000 while category "D" claims are individual claims for damages above US$100,000. Pursuant to Governing Council decision 1 (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13 (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims). It was, therefore, not necessary to carry out cross-category checks between the sections of Claims seeking compensation for evacuation costs and departure claims in category "A".

5/ Three Irish nationals have filed category "C" claims in respect of departure costs and five Italian nationals have filed category "C" claims for personal property losses.

6/ The "C" Panel has not yet recommended awards in two of the category "C" claims filed by Italian nationals and one claim filed by an Irish national in respect of losses for which they have been reimbursed by their respective Governments. Accordingly, it is not possible, at this stage, to make deductions in respect of the "C" claims from the Italian Ministry of Foreign Affairs and the Irish Department of Foreign Affairs claims. Appropriate amendments, if any, will be made to the recommended awards as soon as the "C" Panel has resolved these claims.

7/ The Claimant had categorized the costs incurred in cleaning and repairing the Embassy building and residences as a public service expenditure, but the Panel recategorized this portion of the claim as a real property loss.

8/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6), ("the First Report"), paras 47-64. See also "Report and Recommendations made by the Panel of Commissioners Concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1998/4), ("the Second Report"), para. 45.

9/ The First Report, para. 74.

10/ The Second Report, paras. 55-56.

11/ The First Report, para. 68.

12/ Governing Council decision 7, "Criteria for Additional Categories of Claims" (S/AC.26/1991/7/Rev.1), para. 34(d).

13/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9), para.13.

14/ The First Report, paras.71-73 and reference to Marjorie Whiteman, Damages in International Law (Washington D.C., United States Government Printing Office, 1943) at footnote 30.

15/ See also, "Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blow Out Control Claim", (S/AC.26/1996/5/Annex), paras 85-87 where the Panel found that Iraq was liable "for any direct loss, damage or injury whether caused by its own or by the coalition armed forces".

16/ The First Report, paras. 76-78.

17/ The First Report, para. 85.

18/ The First Report, para. 92.

19/ The First Report, paras. 93-96.

20/ The Panel notes that certain claimants are seeking compensation for payments made to Iraqi Airlines for the chartering of aircraft for evacuation operations. Such payments do not raise any question of violation of the embargo imposed on Iraq because, at its fifth meeting held on 31 August 1990, the Sanctions Committee decided that flights carrying passengers only would not be in contravention of Security Council resolution 661 (1990) (S/AC.25/SR.5, 12 September 1990).

21/ The First Report, para. 85.

22/ Ibid.

23/ Governing Council decision 18, "Distribution of Payments and Transparency" [S/AC.26/Dec.18(1994)].

24/ The First Report, paras. 99-102.

25/ United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220). As the Bulletin did not include exchange rates for the Polish zloty and the Russian rouble, appropriate commercial exchange rates were used for these currencies.

26/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

27/ See the First Report, para. 62 and the reference to Article 7.4.3.(3) of the UNIDROIT Principles of International Commercial Contracts therein.

Annex IV

Decision concerning the second instalment of "F1" claims taken by the Governing Council of the United Nations Compensation Commission at its 81st meeting, held on 30 September 1998 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the Report and Recommendations made by the Panel of Commissioners concerning the second instalment of "F1" claims (claims by Governments and international organizations), covering 17 claims, 1/

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per Government, as noted in paragraph 141 of the report, are as follows:

Government	Amount of Compensation Claimed (US$)	Amount of Compensation Recommended (US$)
Australia: Claim I	563,329	74,128
Australia: Claim II	10,684	10,506
Austria	155,598	40,074

* Previously issued as document S/AC.26/Dec.56 (1998).

1/ The text of the report appears in document S/AC.26/1998/12 [see annex III].

Government	Amount of Compensation Claimed (US$)	Amount of Compensation Recommended (US$)
Cyprus	267,156	60,581
The Czech Republic	11,208	4,733
India	137,023,322	92,621,397
Ireland	557,955	215,111
Italy	659,303	579,955
Japan	1,431,252	1,367,884
Republic of Korea	1,502,895	1,226,772
Norway	157,217	23,149
Poland: Ministry of Foreign Economic Relations	1,824,720	719,723
Poland: Ministry of Foreign Affairs	177,590	177,590
Russian Federation	8,050,606	59,959
Sweden	500,191	445,802
United Kingdom	55,688	0
United States of America	94,442	38,003
Total	153,043,156	97,665,367

3. Reaffirms that when funds become available payments shall be made in accordance with decision 17 [S/AC.26/Dec.17 (1994)],

4. Recalls that when payments are made in accordance with decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of decision 18 [S/AC.26/Dec.18 (1994)], Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, the Government of the Republic of Iraq and to each respective Government.

Annex V

Fifth report of the Executive Secretary pursuant to Article 41 of the Provisional Rules for Claims Procedure: requested corrections to approved claim awards*

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), requested corrections to approved claim awards in claims category "A".

2. As noted in the last such report of the Executive Secretary (S/AC.26/1998/9), requested corrections typically have been reported by the Commissioner Panels in their reports and recommendations to the Governing Council. However, the category "A" Panel has concluded its work and no longer sits. Therefore, the requests for corrections to approved claim awards in category "A" will be reported by the Executive Secretary to the Governing Council.

3. Corrections have been requested to category "A" claim awards in the fourth, fifth and sixth instalments of category "A".

I. FOURTH INSTALMENT CORRECTIONS

4. In the fourth instalment of category "A" claims, three claims submitted by India were found to be duplicates of claims awarded compensation in the same instalment. No compensation should be awarded for the duplicate claims. The total recommended award for India in the fourth instalment should be amended accordingly from US$144,890,500.00 to US$144,880,000.00.

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* Previously issued as document S/AC.26/1998/14.

II. FIFTH INSTALMENT CORRECTIONS

5. In the fifth instalment of category "A" claims, one claim submitted by India was found to be a duplicate of a claim awarded compensation in the fourth instalment. No compensation should be awarded for the duplicate claim. The total recommended awards for India in the fifth instalment should be amended accordingly from US$145,465,000.00 to US$145,461,000.00.

III. SIXTH INSTALMENT CORRECTIONS

6. In the sixth instalment of category "A" claims, one claim submitted by the India was found to be a duplicate of a claim awarded compensation in the fourth instalment. No compensation should be awarded for the duplicate claim. The total recommended awards for India in the sixth instalment should be amended accordingly from US$17,433,500.00 to US$17,429,500.00.

Annex VI

Decision concerning the correction of awards for category "A" claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 81st meeting, held on 30 September 1998 at Geneva*

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary covering 5 claims in category "A", 1/

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for India for three claims from the fourth instalment, one claim from the fifth instalment, and one claim from the sixth instalment. 2/ The aggregate corrected amounts by claim instalment are as follows:

Instalment	Country	Previous total recommended award (US$)	Corrected total recommended award (US$)
Fourth	India	144,890,500.00	144,880,000.00
Fifth	India	145,465,000.00	145,461,000.00
Sixth	India	17,433,500.00	17,429,500.00

2. Directs the Executive Secretary to effect the above corrections and to provide copies of the tables containing the breakdown of the amounts to be paid to the affected individual claimants to the Government of India.

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* Previously issued as document S/AC.26/Dec.57 (1998).

1/ The text of the report appears in document S/AC.26/1998/14 [see annex V].

2/ In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to the Government of India.